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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHILDREN'S LAW REFORM AMENDMENT ACT

FRIDAY, APRIL 7, 1989

Morning Sitting





STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Neumann, David E. (Brantford L)  
VICE-CHAIRMAN: O'Neill, Yvonne (Ottawa-Rideau L)  
Allen, Richard (Hamilton West NDP)  
Beer, Charles (York North L)  
Carrothers, Douglas A. (Oakville South L)  
Cunningham, Dianne E. (London North PC)  
Daigeler, Hans (Nepean L)  
Jackson, Cameron (Burlington South PC)  
Johnston, Richard F. (Scarborough West NDP)  
Owen, Bruce (Simcoe Centre L)  
Poole, Dianne (Eglinton L)

Substitutions:

Adams, Peter (Peterborough L) for Mrs. O'Neill  
Cousens, W. Donald (Markham PC) for Mr. Jackson  
Offer, Steven (Mississauga North L) for Mr. Beer  
Reville, David (Riverdale NDP) for Mr. Allen

Also taking part:

Jackson, Cameron (Burlington South PC)

Clerk: Decker, Todd

Clerk pro tem: Manikel, Tannis

Staff:

Swift, Susan, Research Officer, Legislative Research Service

Witnesses:

From the Ministry of the Attorney General:

Offer, Steven, Parliamentary Assistant to the Attorney General (Mississauga  
North L)

Cochrane, Michael, Counsel, Policy Development Division





LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Friday, April 7, 1989

The committee met at 10:09 a.m. in room 151.

CHILDREN'S LAW REFORM AMENDMENT ACT

Consideration of Bill 124, An Act to amend the Children's Law Reform Act.

Mr. Chairman: I call the meeting to order. This is a meeting of the standing committee on social development convened to consider Bill 124, An Act to amend the Children's Law Reform Act. On our agenda this morning is a presentation on behalf of the Ministry of the Attorney General.

Before we get to that, however, we do have one item of business, a procedural matter to consider as a committee. Your subcommittee met to structure the schedule of witnesses, people appearing before the committee. We were able to accommodate everyone who submitted a request prior to the deadline advertised.

Some of the people who made requests to appear before the committee have not responded to several calls back from the clerk's office. As a result, we do have some free time. The committee may wish to consider deciding to try to fit in eight people whose requests came in after the deadline. I put that to the committee for its consideration at this time so that the clerk can contact these people and try to fit them in on Monday afternoon and Tuesday afternoon.

Mr. Cousens: I so move.

Mr. Chairman: Moved by Mr. Cousens, seconded by Mr. Carrothers. Any discussion?

Mr. R. F. Johnston: I would like to make sure that we do try to get them in, but there is one group in particular which is a bad oversight on our part—I did not notice it in our subcommittee meeting—Access for Parents and Children, in Etobicoke, which I notice you have down as number one on this list of additions. That is one that I know had made contact at the time of its being debated in the House. For some reason or other, it did not make it on to the list, for whatever reason. I am not laying blame here at all; it could easily have been a very understandable oversight.

That group, because of the nature of its program, just has to be part of our discussions. I just want to make sure of that in terms of prioritizing these, as we discussed in the subcommittee before, that we give priority to the groups that are in the ranking here and then the individuals subsequent to that, so that we make sure that groups like theirs, which are doing this very ground-breaking work in the province, get before this committee.

Mr. Chairman: For the committee members' information, that is the procedure we followed in scheduling the other people, to give priority to groups and second priority to individuals. Is there a consensus we give similar direction to the clerk on this? Okay.

Mr. Cousens: How many will we be able to fit in? Does it look as if we can get all eight different presentations?

Mr. Chairman: We should at least get the four groups in; that is for sure.

Mr. Cousens: That is good. We are making an effort and that is important.

Ms. Poole: I just noticed that there are a significant number of 15-minute slots. I suggest that obviously our first priority should be the groups, but I do not see any reason why the individuals who have already indicated they wish to appear could not fit into the 15-minute slots. It looks like there are quite a few for Monday and Tuesday.

Mr. Chairman: It may be possible to fit them all in.

All those in favour of the resolution? Opposed? Carried.

We will then move to the business for the morning. At this time, I would recognize Steven Offer, parliamentary assistant to the Attorney General (Mr. Scott) and accompanying him, Michael Cochrane, counsel, policy development division, Ministry of the Attorney General.

Mr. Offer: Thank you very much.

Mr. R. F. Johnston: On a point of order, Mr. Chairman: If I might be mischievous just for a moment, it probably will not happen again during the entire set of public hearings. I just want to make note of the fact that again the Attorney General himself is not with us, as he was not in the debate.

Although I have a great fondness for Mr. Offer, the member for Mississauga wherever, and I recognize his competence, it is interesting to me that this morning, just by happenstance, I learned that the Attorney General is discussing life as a minister, I presume, with the parliamentary interns, rather than being with us. I think that is a very interesting statement of priority at this stage.

Mr. Chairman: I am not sure that that was a point of order.

Mr. Cousens: Mr. Chairman, on the same point of order, which I happen to support, I would like to say I am very pleased that Mr. Offer is here, because I think we will probably get more facts and more data and more information. The integrity of Mr. Offer is so complete—

Mr. Reville: More good nature.

Mr. Cousens: I do not know about that.

Every time I have asked a question of the Attorney General in the House, I have never had an answer. Although Mr. Offer has not the ability to answer anything, at least he tries. I think we have done very well to have Mr. Offer.

Ms. Poole: On another point of order, Mr. Chairman: I do not think anybody can question the integrity and good intentions of our Attorney General.

Mr. Reville: That is not quite so.

Ms. Poole: I do not think anybody should; let's put it that way.

Mr. Cousens: If anyone has read that into any remarks I have made, I would withdraw them because I would not want to do anything—



Mr. Chairman: Shall we get on with the business at hand?

Mr. Cousens: We are talking about the integrity of the whole government.

Mr. R. F. Johnston: I certainly did not mean not to welcome Mr. Offer and his new view.

Mr. Reville: The chairman clearly thinks this is not about politics.

Mr. Offer: This bill is another in the continuing initiatives of this Attorney General. He has seen fit, as is his right, to allow me to carry legislation through second reading and committee, and I am most pleased to do so. I hope that members will give me some of their patience, because I have a touch of laryngitis today.

To my left is Michael Cochrane of the Ministry of the Attorney General. In dealing with Bill 124, An Act to amend the Children's Law Reform Act, I will be asking Mr. Cochrane to provide some information as to the current process with which access orders may be enforced and then to provide some background and history into this bill. I believe this is important information as we proceed through this committee process. Upon completion, if my voice permits, I shall then deal with an overview of the bill itself.

Mr. Cochrane was very much involved in the development and implementation of major family law initiatives and chaired the Attorney General's advisory committee on mediation in family law. In addition, he has been the Ontario representative on the federal-provincial committee on family law, as well as one of Ontario's commissioners to the Uniform Law Conference of Canada for the last four years.

Before asking Mr. Cochrane to present his information, I would like to reiterate some of those points made by myself on second reading, that the amendments proposed by this bill are designed to assist both noncustodial and custodial parents to enforce access rights and obligations.

The bill before this committee seeks to achieve a number of goals:

first, to minimize the use of children as pawns in disputes between their parents;

second, to provide a speedy and inexpensive means by which access difficulties can be determined by the court, including guidelines for the determination of a wrongful denial of access;

third, to emphasize that the best interests of children are met through ongoing opportunities to learn from both parents, as is each child's right;

fourth, to provide the court with enforcement tools other than jail sentences and fines when enforcing access orders.

These alternatives include compensatory or makeup access, reimbursement for expenses incurred as a result of the wrongful denial or the wrongful failure to exercise its supervision and, if both parties agree, mediation.

This bill also addresses specifically the government's concerns about domestic violence. The bill proposes a means by which domestic violence would be drawn to the attention of the court on each and every application or motion

concerning custody of or access to children, and finally, that these remedies will only be available when the court concludes that such an order is in the child's best interests.

1020

I know that each member realizes we are dealing with a crucially important piece of legislation, and I look forward to this public hearing process and subsequent clause-by-clause analysis, and also, hopefully, to getting my voice back.

I would now like to turn to Mr. Cochrane for his presentation dealing with the current process by which access may be enforced, as well as providing members of the committee with a history of this bill. Afterwards, we will move into an overview of the bill itself.

Mr. R. F. Johnston: Which you will lead us through?

Mr. Offer: I will.

Mr. R. F. Johnston: With this voice?

Mr. Offer: With this voice.

Mr. R. F. Johnston: This is cruel and unusual punishment that the Attorney General is putting you through.

Mr. Cochrane: If you decide to change your mind on that, I will not feel inconvenienced covering that part of the bill as well.

I really want to confine my remarks to three or four areas by way of background. I understand I have about 30 minutes to do that. What I would like to try to do in the 30 minutes is give you an idea, first of all, of where access orders come from in Ontario now, how they are enforced in the existing system and how there are some shortcomings in the existing system that I think, after we examine the procedures themselves for enforcement of the orders, will become very clear.

After that, I want to give you an idea of just what the actual origins of Bill 124 were, because there has been some doubt cast on exactly what the original motivations were behind the legislation. I think if I give you some detail on exactly how and why the initiatives came forward, it may be of use to the committee.

To begin, I simply want to alert the committee to the fact that you can actually get an access order from two places in Ontario. One is under the Children's Law Reform Act, which is a provincial piece of legislation confined to dealing with situations that do not involve a divorce. In other words, if a couple is separating and needs to use the court procedures but is not asking for a divorce, the parties can obtain custody and access orders under the Children's Law Reform Act. If the parties were asking for a divorce, they would be relying on the Divorce Act and the provisions of that federal legislation to get custody and access orders. So we are really talking about only the Children's Law Reform Act, and you should understand that is really the source of orders that will be affected by the enforcement provisions proposed by this bill.

I suppose the second thing that you should understand about the origins



of access provisions is that many people resolve their disputes by way of separation agreements. They often agree by the terms of what amounts to a contract to structure access in a particular way. It can be very specific or it can be quite general. There has been a tendency in the past in all Canadian provinces to have access orders that provide for liberal access or reasonable access or access to be agreed upon by the parties.

I think many parents find that when a disagreement arises about when access should be exercised, a general provision like the ones that I just described is not particularly effective at the time of enforcement. On the other hand, some parents who have applied their minds to how they want the particular access to be structured actually work out very specific terms that can be incorporated into either an order of the court or a separation agreement.

They can say things as specific as "every Wednesday night from six o'clock to nine o'clock," "every Saturday from 10 a.m. till Sunday at 6 p.m.," or "overnight visits in certain circumstances." They can include such things as "access is not to be exercised in the presence of a third person." It can include a specific provision that "access is to be exercised only where a third party is present," which is where we get our supervised access orders.

Those are the origins of the orders. What we are really looking at in the remedies proposed in Bill 124 is how orders that come out of provincial law, out of the Children's Law Reform Act, and agreements that come out of separation agreements are actually enforced when a problem arises between the parents.

In Ontario, there really is only one way of enforcing an access order—one legal way, that is—and that is the use of the court's contempt power, where the court is asked to invoke its own authority to punish, if you like, a parent in a quasi-criminal proceeding for not abiding by the terms of the court order. There are other things that have sprung up from time to time over the years that courts have suggested and lawyers have tried to use to encourage parties to comply with the court orders, but you should understand that when you are talking about legal remedies the only one that is available is the contempt power.

Just by way of a footnote, there are other things that can be used. Sometimes the courts have said to parties, "If you're not happy with the way the access is complied with, you can ask the court to reverse the custody." In other words, if that parent is not allowing you to see the child, reverse it and give it back so that you have custody, and then you can permit the other parent to have access.

Another very disturbing trend, which I would like to spend a few minutes talking about in a second but will just alert you to now, is that a tendency has developed in the courts to link a denial of child support to failure to comply with access. The courts have said to some parents: "If you're not going to let the other parent have access to the child, we're going to order that your child-support payments be suspended until you actually comply with the access order." I will spend a few more minutes on that shortly. A recent British Columbia Court of Appeal decision also, where a custodial parent did not facilitate the other parent's access, actually wiped out arrears of support that had arisen over a period of time.

Other provisions that are already in the Children's Law Reform Act that we are going to spend a fair amount of time talking about during the course of



the hearings include mediation and the supervision of access orders. You should understand that those are really not methods of enforcement, but rather methods by which access or discussion around the problems of access can be facilitated. They are not truly methods of enforcement of court orders.

The contempt power is the one that parties are referred to first by their lawyers. If you go into a lawyer's office and complain that you are not having access and ask what remedy you are supposed to be using, the lawyer's response, whether you are in provincial court, district court or the Supreme Court of Ontario, is the contempt power.

The contempt power really comes from two sources in Ontario law. If you were in the provincial court, section 39 of the Children's Law Reform Act says here is a contempt power that the court has been given that allows it to control its own process. I have had the clerk distribute a summary of how provincial court contempt powers work. I have also had distributed a summary of how the Supreme Court and district court contempt power works.

Just by way of overview, you should understand that use of the contempt power, in terms of enforcement, is unlike any other method of enforcement that is used between the parties, because the contempt power is a power that is used by the court itself. It is like the state intervening or the court intervening to protect its own process, unlike some other kinds of enforcement where one party invokes the court's process to compel another party to do something that is relevant to the two parties themselves. The contempt power is quasi-criminal in nature and is therefore like the court saying to one of the parties: "You have, in a sense, committed a crime and we are going to now evaluate the circumstances of your committing that crime and decide whether or not you should be punished for it."

Because it is like a crime in the way it is treated in the court, it has a different evidentiary standard that is used. For lawyers, I think the first thing they teach us in law school is the difference between the standards of proof in civil proceedings as opposed to criminal proceedings. In a civil proceeding, a normal one, like a family proceeding, the standard of proof is on the balance of probabilities: whoever tips the scales either way is generally successful in a proceeding.

In criminal proceedings, it is different. Any point that is relevant to someone being convicted of an offence has to be established beyond a reasonable doubt, which means that a much higher standard has to be met. Although the contempt power is used in the civil process and is used to enforce access orders, you can be successful on a contempt motion only if you meet the criminal standard of proof, which is beyond a reasonable doubt. One of the flaws and one of the things that makes this remedy unsuitable for access enforcement is that it uses a very high standard of proof simply to obtain the enforcement of an order that is made by the civil courts.

1030

That is part of the principles that are behind the contempt power. Another part of it you should understand is that the court will make a finding of contempt only if it comes to the conclusion that the failure to comply with the court order—in other words, the failure to abide by the provisions of the court order with respect to access—was because the custodial parent wilfully did not comply with the order. If it was a case of bad judgement or, as the courts talked about in one case, of a parent being emotionally overwrought, those are not good reasons for a finding of contempt. The court will do it

only where the custodial parent applied his or her mind to the problem of access and then wilfully decided not to comply with the order.

The only final principle you should understand about the contempt power generally is that there has been a principle in the courts that says the courts should use that process only as a last resort. It is something that should be used sparingly, and it is used then, when it is finally invoked, only to protect the administration of justice. So you can see that it is a remedy or an enforcement tool that sets it apart from all other kinds of mechanisms for enforcement of court orders. It is really the enforcement of last resort for the courts. But given all of those hamstrings that are attached to the use of that remedy, that is the only one that is available for access enforcement in Ontario.

What I would like to do is give you a flavour, if I could, of what it actually means to institute contempt proceedings in Ontario. To do that, I am going to make brief reference to the summaries that I have had distributed. Let's say, for example, someone was going to enforce an order for access that was made under the Children's Law Reform Act and the order was made by a Supreme Court of Ontario judge.

If access were denied, for example, on a weekend, the client would presumably go into the lawyer's office, if he could get an appointment, first thing on Monday morning. They would arrive and say, "Institute enforcement proceedings." The best that the lawyer could do is try to go down to the courthouse, and I will use the Toronto example, on Monday or Tuesday as soon as he has been able to put all the paperwork together. There would have to be a notice of motion, affidavit material, sworn statements from the client that would be personally served on the other parent, and fixing of the date, if he is lucky in an attempt to convince the court that this was an emergency that requires a Supreme Court of Ontario judge's emergency consideration of the problem, to be able to get on Thursday morning of the same week.

If they were successful, they would be heard on the Thursday, possibly. If they were not able to convince the court that this was an emergency—I checked with the court the other morning—the first available date in Toronto is May 19, when they would have their hearing scheduled for first consideration of it. Assuming they got into the court either on the Thursday or on May 19, which is five to six weeks down the road, and the other party, the custodial parent responds with affidavit material, the two lawyers examine the respective versions of events and may decide that they need to adjourn the entire proceeding to arrange an appointment to cross-examine the parties on their statements.

That means taking out an appointment with an official examiner's office and arranging for a court reporter to be present. Witnesses are sworn, they are cross-examined under oath and everyone returns to his office while the reporter prepares a transcript. The transcript, if it is expedited—in other words, if a special request is made and extra money is paid for the transcript—can be obtained within a week; if not, two or three weeks.

The flavour I want to give you of the process is that if you do not convince the court that it is an emergency, you have a five- or six-week wait before your hearing is first scheduled and you can have an adjournment of possibly three or four weeks. If you have an adjournment for cross-examinations, you wait for a transcript and then you schedule a hearing again. It is possible to have up to nine weeks elapse between the first denial of access and the actual hearing.

In other cases, if they do not adjourn for cross-examinations, if they do not want transcripts, they may go into court and simply argue the matter on the merits and it can be dealt with in anywhere from three to five weeks, if they are lucky. In some cases, in an emergency, if they were able to walk in and convince the court on a Thursday morning it should be dealt with, then it might be dealt with that way, too.

The point that I want to make in terms of timing is that parties who want to enforce access orders are probably looking at a month. In the meantime, from the beginning of the month until the time of the hearing, there may be another four or five or six or 10 further access visits that are supposed to take place that either take place under a lot of stress or do not take place at all because they do not want to have it influence the ultimate determination of the matter by the court.

That is really what happens in the Supreme Court of Ontario. I have set out in the summary that I have distributed to you a little bit of the process.

Let's assume that you get through it and you are successful—there are some people who will tell you that you will never be successful on a contempt motion for access; lawyers will tell their clients that they have to do it three or four times before they can even get close to convincing the court that a finding of contempt should actually be made—but assuming you were able to convince the court, the penalties that are set out, which I have reproduced in the materials that have been distributed, can range from a fine through to a jail sentence. If you are trying to enforce your order through the district court, the fine can be up to \$10,000 and the jail term can be up to six months. By contrast, in the provincial court (family division), the fine can be up to \$1,000 and the jail sentence can be up to 90 days. But to my knowledge, there has never been a finding in Ontario where a custodial parent has been jailed or custodial parents have been fined in order to control the court's process with contempt.

That does not offend me, because part of the problem with the use of the contempt power is that it is a completely inappropriate remedy for the enforcement of access orders that the custodial parent could be taken away and possibly jailed or fined. Neither of those results would serve the best interests of the child, which is another fundamental flaw in the use of the remedy. It is a bit of a catch-22: if you succeed, you do not serve the best interests of a child.

I hope I am able to illustrate in a general way some of the shortcomings of the use of the contempt power. It is slow. It is very cumbersome from an evidentiary point of view. Even if you are successful, there is an inappropriate result.

Finally, the point that I have reproduced on the bottom of the second page of both items is the estimated cost of these proceedings. Whether you are in provincial court, in the Supreme Court of Ontario or in district court, for one application to the court for a contempt finding that is probably going to be unsuccessful, \$3,000 is the estimate lawyers have given me. The clients are expected to institute proceedings like that three or four times before they might actually be successful. A noncustodial parent could be looking at a bill to the tune of \$12,000 simply for the enforcement of access orders.

That is really an overview of the shortcomings of the existing law. I will leave it to you to go through the memo at your leisure. You may wish to ask any of the counsel who will be appearing before you as witnesses about the



content of it or the estimates of costs. I took the liberty of speaking to lawyers I knew would be witnesses before the committee to find out what their estimated fees were going to be and that is where I got the figure \$3,000 as the ballpark.

The lawyers I spoke to also said they would not discuss going to court to enforce the access order until they had a \$2,000 retainer, so to get started, an access parent wanting to enforce is looking at having to write a cheque for \$2,000.

Mr. R. F. Johnston: I have one question I would like to ask at this point; there will be others later on. So much of what you are saying is anecdotal in terms of the experience you have had and talking to people. What is there statistically about the average length of time for the various remedies that you talked about, in terms of how many times do people get the emergency orders and how many of those requests were made? Is there a statistical backup to this? We do not have it in our research material I have received, and I am wondering if you could tell us that; or are we just going to be dealing with anecdotal information on this from the collective wisdom of people who are out there? Has anybody done a study of this?

1040

Mr. Cochrane: No one has done a study on it. Some studies have been done about certain aspects of problems with access enforcement, but for Ontario no study has ever been done about the use of the emergency procedures. If anything, what we are hearing, again anecdotally, is that the process is so expensive and so cumbersome that many noncustodial parents have simply given up on it so that the process, as inadequate as it is, is even doubly self-defeating, because it is being abandoned because of its expense. But to answer your question, there are no studies.

Mr. R. F. Johnston: It would have been useful, I think, before legislation was developed--there are two bills now brought before us--to have some notion of just how many court initiations have actually taken place in this specific period of time and what they look like. It is surprising that we do not have them.

Mr. Cochrane: The only other guidance I might be able to give the committee is that it is not entirely anecdotal, but we can look to anecdotal experience. The anecdotal experience, to be fair, is contradictory on it. There are some people who will be appearing before the committee to say that the existing system is just fine, that it does not matter that the expense is like that, that it is just part of family litigation for the expense to be high.

If you look at some of the other studies that have been done, for example, in the United States, I did a random sort of picking and choosing, pulling together of some material. The most recent issue of the Harvard Law Review contains a case comment on a problem that has come up in California with access enforcement, where they report that the California courts now are linking access denial with support suspension. The comment that is included in the article says the court should be using the contempt power more because that is the only way they have, even in California, of enforcing access orders, and they footnote a reference to some studies that have been done in the US.

I am not saying this is conclusive for Ontario, but just by way of

example, one author, Novinson, who wrote an article entitled Post-Divorce Visitation: Untying the Triangular Knot, came to the conclusion as a result of his research that about 50 per cent of custodial parents have made sporadic attempts to interfere with or impair the value of visits. In another study done by an author named Fulton, in Minnesota, where they took 500 or 600 post-divorce parents and asked them about their experiences around access, that study found 40 per cent of custodial parents—in this case the sample custodial parents were exclusively wives—reported they had refused to let their ex-husbands see the children at least once and admitted that their reasons had nothing to do with the children's wishes or safety but were somehow punitive in nature.

Those are some of the comments we were able to glean from studies done in the US. I do not hold them out to the committee as being conclusive of Ontario's experience, but my point is that the difficulty with access enforcement—and I think it will become even clearer before I finish my remarks—is that this is not something that is happening just in Ontario. There are other Canadian provinces that are worried about this difficulty. There are American states that are wrestling with it.

The New Law Journal in England about a year ago published an article bemoaning the fact that the only remedy the English courts had was the use of contempt power. The article was really bemoaning the fact that the use of contempt for the enforcement of access orders is the equivalent of using a blunt instrument on a parent, "Comply with an order or go to jail." The search in Ontario, at least—and I want to spend a few minutes telling you about it in a minute—has been to try to find something between doing nothing and using a blunt instrument, and that is really where the selection of the remedies in this bill has come from.

It is an American problem; it is a Canadian problem; it is one that is being dealt with in England. Australia has also been dealing with the matter. They had a report from their Family Law Council on the use of contempt for the enforcement of access orders.

That is not the only part of it that we have to be concerned with, because there is another remedy in Bill 124 that is for the custodial parent, because another problem we have heard about—and, again, it is only anecdotal—is that the custodial parent often complains that the noncustodial parent, the father, does not come to see the child when he is entitled to the access: If we are going to say that you can enforce the order, why not enforce the obligation to come and see the child? If what we are really trying to do is advance the child's best interests, then there should be a balance. If it is really good for the child to see that noncustodial parent, then something should be available to make him comply with the order.

The source of that kind of thinking is an author who is becoming increasingly well known, Lenore Weitzman, who wrote a book called The Divorce Revolution. She commented in her text; I will make a copy of that section available for you. At page 231, she notes that more and more policy developers are beginning to try to think of ways to secure the performance of the noncustodial parent's obligation to see the child, and that is what this bill in part attempts to do, but that is really where we gleaned the information from as we tried to work up a response to the inadequacy of the contempt power in Ontario.

Again, it is anecdotal and in many cases we wish it was better. We wish there were statistical studies and things. Even when we did the Family Law Act

for three or four weeks back in November and December 1985, for many of the principles that were incorporated into the Family Law Act, we did not have studies about how property was being divided on marriage breakdown. We had to rely on what we were hearing from practitioners and what we were hearing from clients themselves. It seemed to work in some circumstances. What we have heard in terms of access is good enough in our opinion to ground these provisions.

Now if I could just spend a couple of moments—

Mr. Chairman: Before you move on, we have a question from Mr. Reville.

Mr. Reville: There are now two questions because Mr. Cochrane went on to a different subject. Perhaps I will ask my first question.

Mr. Chairman: I tried to catch him before he did that.

Mr. Reville: Yes. That is all right. We will save time. I will do them both at once.

You indicated that there are two studies that show between 40 per cent and 50 per cent of custodial parents report—self-report—having denied access at some point in a punitive way. Does that information pertain only to female custodial parents? Are there any data or are there enough male custodial parents that there are any data about whether they ever deny access?

Mr. Cochrane: If you look at some of the behavioural literature on this, for example, Wallerstein's and Kelly's textbook—yes, I do have a copy of it—Surviving the Breakup, which is a bit of a standard text for lawyers and for behavioural therapists in the family law area, they talk about the angry parent and that individual's role in disruption of visitation, as they call it in the United States.

The examples used by those authors are really not particularly gender-specific. It is fathers doing it to mothers and mothers doing it to fathers. I do not think there is any magic in who the custodial parent is, but specifically, there is no study I am aware of on a sample of male custodial parents who may deny access.

Mr. Reville: But I think we do know roughly how many fathers have sole custody, do we not?

Mr. Cochrane: There have been some statistics that have been thrown around recently on that point. They are becoming more specific but if someone said, "What is the percentage of custodial parents who are fathers?" I personally would not be able to answer the question.

Mr. Reville: The second question relates to the second point Mr. Cochrane was making. That is the point about how you require the noncustodial parent to use the access that has been allowed. Are there studies that show that even if a noncustodial parent does not want access, the access is beneficial to the child even under those sorts of unwilling circumstances? It seems an odd idea that you force people to be with each other if one of them does not want to be there.



1050

Mr. Cochrane: To answer your question about whether there is a study on it, the answer is no. There are comments that have been made. One in particular that comes to mind is Professor William Hodges, who has done a fair amount of work around access and behaviour of children during visitation. He has made the comment that as you look at access difficulties, you should really look at why parents are not involved with their children.

In a speech he gave a couple of years ago, he identified three American studies that say there is about a 25 per cent rate of abandonment by noncustodial parents. In other words, after the marriage breaks down, there is a brief period where support is paid and there can be access difficulties and there can be ongoing arguments about who should have custody, but at a certain point in time the noncustodial parent, for whatever reasons, and I am not saying it is related just to the access difficulties, completely abandons the family. They will walk away from their support obligations, visitation, custody, everything. Part of that is frustration at access difficulties.

When you ask if there is a study that looks at whether noncustodial parents should be forced to go for the access and that that access will be good for them, the answer is no. What we should be looking at is whether or not, if there is a good, effective remedy at the front end of the system, those parents would have an easier time staying involved and have their time with the child facilitated. That is really one of the goals of the bill, to make sure we do not ever get to the point where we force a parent---

Mr. Reville: I think that is a heck of a leap of faith, brother.

Mr. Owen: Mr. Cochrane, you have given us some figures about the cost to the parties involved today, and they are rather startling. Not too many years ago most of the people in our family court were there without any lawyers at all. What do the staffs provide now to assist people to still go into the courts without all of these horrendous legal costs? How can they represent themselves? Are the staffs so overworked now that they cannot say, "Well, here, you can prepare this affidavit and we'll swear that"? I have two questions about what you have said, and that is the first one.

Mr. Cochrane: There are two edges, really, to even your first question: Is there help for people, and even if there was, is that desirable? First, there is not a lot of help; in Supreme Court and district court, I would say zero. There is nobody there to tell you how to fill out a form because the forms are not cases where you can check boxes. It is a need to go away and have a word processing package, which most law firms have, where they can run off a notice of motion, run off a standard-form affidavit that fills in the paragraphs to tailor that particular client's story to the proceeding that is before the court. In Supreme Court and district court they really need a lawyer.

In provincial court, there has been an emphasis over the years on trying to demystify the process a little and allow the parties to do it themselves. A lot of support creditors, say a mother who is owed child support, at one time, before we introduced the support and custody order enforcement program, could go into the court and get a little bit of assistance to fill out forms and sign affidavits and file them.

Mr. Owen: Along that same line then, into which of these categories do you put the unified court? Is that a court where there is assistance

available or is that a court where you have to have a lawyer and there is no way you can get around it?

Mr. Cochrane: In either court they are receiving minimal assistance—

Mr. Owen: What about the unified?

Mr. Cochrane: —but in provincial court (family division) and unified family court, they are at least getting a little bit.

Mr. Owen: So the unified court is providing that assistance to some extent.

Mr. Cochrane: To some extent, but I would say that individuals who are using that process would say not nearly enough. The flip side of that, the problem is that it may be legal advice and there is a reluctance by some people to say, "You should put this in an affidavit and not that," or, "You should fill out this form and not that form," because that really becomes legal advice.

Mr. Owen: It almost appears that in our efforts to provide guarantees of rights we have created a monster that is really self-serving.

Mr. Cochrane: Well, there is no other procedure for enforcement you would be more likely to need a lawyer for than a contempt one, because most people who walk in off the street would not understand the difference between the two evidentiary burdens of balance of probabilities as opposed to beyond a reasonable doubt. But the whole point of the Bill 124 process, which Mr. Offer is going to be explaining in more detail, is that we have taken the need for the affidavits out. The process here is one where they are in court quickly. There is no need for affidavit material. There is no need to adjourn for cross-examinations. There is no need for transcripts. They simply come to the court and tell the judge exactly what the—

Mr. Owen: My second concern about what you have already said is that you are stressing again and again the rights of the people to be heard and to get their arguments and concerns before the court. Not too many years ago, family court judges were invariably the people who would act as mediators and then, as the volume increased, they were not able to cope with that and it became more structured.

Mr. Chairman: Are you getting to the question?

Mr. Owen: I am coming to my question. Then, in our wisdom, the government started to introduce mediators to try to cope, and again, from what you are saying now, we seem to be getting more and more structured. Where is the role of the mediators? Why do we have to have all of these structured fights in open court, rather than getting somebody to get through to where the people are at?

Mr. Cochrane: You have struck on what, I think, was a fundamental concern in the delivery of a remedy like this.

Mr. Owen: That is what I am hearing from other people who are in the business.

Mr. Cochrane: You are absolutely right, but the difficulty is that mediation, arbitration, negotiation, facilitation, conciliation—all the words



we are hearing more and more—should never be considered as a replacement for the courts. They should only be considered alternatives to the use of an adequate enforcement system because people cannot negotiate unless they know what is going to happen when they go into the courtroom.

The fundamental underpinning of this legislation is that if you know what is going to happen when you go to court—for example, with property division, if you know that it is a 50-50 division, because the act says so, as it does now—you are able to negotiate before you go into the courtroom. If you know in access enforcement that nothing is going to happen to you if you are accused of denying access—certainly nothing is going to happen to you if you are not going to exercise your access because there is no way of enforcing that now.

But we can only facilitate negotiation and mediation in advance of the courtroom if people know what they are going to get when they get in there. If they know they are going to get nothing, which is no enforcement through contempt, then there is no basis upon which they can negotiate. There is an imbalance. If one party knows he is not going to suffer any consequences if he goes into court, why should he negotiate?

Mr. Owen: Can I do a Richard Johnston? Do you have any figures? I am going to ask if there are any figures. Do you have any figures as to how many numbers, how much money we are putting into the mediation part of our process?

Mr. Cochrane: We have just completed the 18 months of our Attorney General's Advisory Committee on Mediation in Family Law—the report is not made public yet so I am a little bit handicapped in talking about its content, but I would say it is safe to say that most mediators would tell you that in Ontario right now the amount of money that is put into mediation is minimal; nothing. There is no public funding of mediation services, with the exception of maybe one or two small locations. There are some courthouses that have a mediator on staff. There is nothing comprehensive for the province.

Mr. Owen: So you cannot get us that information?

Mr. Cochrane: The committee's report is being translated and printed now. It may be available before we actually go into clause-by-clause; I am not sure. To answer your question, there is no publicly funded mediation. Recommendation 251 of the Social Assistance Review Committee report, George Thomson's report, says specifically that there should be an effort to provide mediation for low-income and middle-income families.

Mr. Chairman: As chairman, it is my duty to keep us on track. I have three names on the list: Dianne Poole, Hans Daigeler and Richard Johnston. I suggest we hear the balance of the presentation—otherwise, we may not get it in this morning—and then take whatever questions remain at the end.

Mr. Cousens: I support the chairman.

Mr. R. F. Johnston: If I might just have a word on this, what I was trying to do with my question was only to ask for statistical information, whether there is extra information that can be provided. I think if there are questions of that kind, they are useful at this stage.

If we want to get more into proceeding along with some of the questions that are there and get more into that kind of exchange of information, it should wait. But if people have questions about specific information that they

did not hear, but wonder if it is available, that is the kind of thing that may be useful now, that can be acquired and brought to us or whatever as we have the rest of the morning's discussion.

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Mr. Chairman: Have you concluded your presentation, Mr. Cochrane?

Mr. Cochrane: I want to spend just a minute on the origins of Bill 124, if I can, and some of the other things that are happening.

Mr. Chairman: Then we will go to Mr. Offer. I think that should leave some time for questions. I am just concerned that we get the complete presentation.

Mr. Cochrane: The origins of Bill 124 really start in two places: early in 1985, and particularly in November and December of 1985. I say early in 1985 because at that time in our ministry we were working on the Family Law Act and the Support and Custody Orders Enforcement Act, which at that stage, to be frank, were a pretty full plate for the people who were developing them and putting the legislation together.

We knew at that stage there were other problems down the road that we were going to have to work on, and one of them was access enforcement. It became clear, though, during the standing committee consideration of Bill 1, the Family Law Act, in November 1985 that there appeared to be a problem with access enforcement as well, because we had some groups come before the standing committee that said, "You should put in the Family Law Act better ways to enforce access orders."

We were really left in the position of saying to the people who made those public submissions that we thanked them for their ideas, but that it was the wrong bill, that we had the Family Law Act in front of us and not the Children's Law Reform Act. So it was really as of the fall of 1985 and through to the spring of 1987 that the access enforcement work was undertaken, with the bill finally being introduced—Bill 60, the original version of this bill—in the spring of 1987.

The only reason I am taking what is really an unusual position with the origins of the bill is that there have been theories advanced that the bill is some kind of direct response to incredible pressure from fathers' rights groups and that we are simply tossing some kind of panacea out, that because we did the Family Law Act and the Support and Custody Orders Enforcement Act first, we are now trying to balance the scales somehow with the bill. Nothing could be further from the truth. As a person who was involved in that process from the very early stages, I can tell you that is not the case with this. I know, because I was there through the Family Law Act proceedings and through the Support and Custody Orders Enforcement Act proceedings.

Those groups or the groups that are out there that I think have been labelled like that were no doubt supportive of Bill 160 when it first came forward. I think from that point forward there has been input and comment, particularly on Bill 60, from both sides. Most of the domestic violence provisions that are contained in Bill 124 came as a result of the public consultations that took place after Bill 60 was introduced.

The other thing the committee should understand is that the federal-provincial committee on family law policy, which is a national body, has people from each province and from the federal government, who do the same kind of work that I do, sitting on this committee. We try to meet twice a year and we share a lot of information and data about family law initiatives. We try to set an agenda. That is where support and custody orders enforcement came from; that committee was the group that developed that idea.

It was in 1986 that we decided to add access enforcement to our agenda, because each of the provinces was interested in seeing if we could make the system better. An unusual relationship was struck up between the federal-provincial committee on family law policy and the Uniform Law Conference of Canada. The uniform law conference designs model legislation in all areas, from the Human Tissue Gift Act through to charities through to family law.

We were making some amendments at the Uniform Law Conference of Canada to model legislation dealing with support enforcement. The uniform law conference asked the federal-provincial committee on family law policy if we would work up an access enforcement model piece of legislation and bring it to the uniform law conference for approval, and we said we would do that.

In August 1988, representatives of the federal-provincial committee—myself and a representative from Quebec—jointly made a submission to the Uniform Law Conference of Canada advocating a model access enforcement remedy. It was recommended by the entire federal-provincial committee on family law policy. That model remedy is Bill 124. It was accepted by the federal-provincial committee on family law policy. It was endorsed by the Uniform Law Conference of Canada last August here in Toronto.

That is where the idea began, that is how it was formulated and that is how it has gained acceptance, through the federal-provincial committee and the uniform law conference. Since that time Ontario introduced Bill 60, but since we have got the ball rolling, Newfoundland has enacted all of Bill 124 already. This is now part of their law. It is going to be proclaimed this summer, but they had it through their legislative process last year. Interestingly enough for Newfoundland, it did not have any statutory family law at all. Their policy developers went across the country and took the best provisions of everybody else's family law and built their own family law legislation. For access enforcement, they took Bill 124. It is going to be law this summer in Newfoundland.

Manitoba, which has a different population base and also has a different experience in the courts with access enforcement, took half of Bill 124. They took the half for the custodial parent and have enacted it. The Alberta Legislature has a private member's bill pending before it, Bill 201, that is Bill 124 with some minor changes. I am told through my colleagues on the federal-provincial committee that other provincial legislatures are considering a movement to a structure like Bill 124. Australia has requested a copy of it. A number of American states have versions of it that they are looking at.

That is really where the idea came from, and where it sits today is here for the public hearings in Ontario, which I think will be watched closely by other jurisdictions.



Mr. Chairman: Thank you, Mr. Cochrane. Mr. Offer, would you conclude your presentation.

Mr. Offer: In dealing with an overview of this legislation, one must of necessity touch upon section 6 of the bill, which amends subsection 35a of the Children's Law Reform Act. By this section we are providing that if the court is satisfied that the custodial parent wrongfully denied a noncustodial parent access to the child, the court may make one or more orders from a list of four provided.

These potential orders are that the court (1) can order that the custodial parent give back the time that was denied, (2) require supervision, (3) provide that the noncustodial parent be reimbursed for expenses that were actually incurred and (4) can order, if the parties agree, the appointment of a mediator to assist them to resolving the underlying dispute.

I think it is important to indicate that with respect to orders for supervision and mediation, there is no significant change in the process. The remedy simply provides that orders already available under the Children's Law Reform Act may be made in the context of access enforcement.

It should be noted that denial of access is wrongful unless there is a legitimate reason for denying access. Members will see in this bill eight examples of reasons for legitimately denying access. This is of extreme importance. Assuming the custodial parent does not satisfy one of these reasons, the court is then in a position to make a finding that access was wrongfully denied and turn its consideration to which, if any, of the four court orders can be made and still be considered in the best interest of the child. It is that consideration, the best interest of the child, which is an umbrella over this whole legislation.

Of importance is that should the court select the compensatory or makeup access order as a means of addressing the wrongful denial, such compensatory or makeup access may only be the equivalent of the time that was actually denied. This is to avoid any temptation to use the restoration of access in a way other than compensatory. We did not wish to see time with the child to be used in a way which could be considered punitive. In addition, such a limitation avoids any arguments that compensatory access is a variation of the order. The noncustodial parent will only receive his original entitlement to time with the child.

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This section does not end there, because it also states that a custodial parent faced with a noncustodial parent who has, without reasonable notice and excuse, failed to exercise the right of access or to return the child as the order requires may make a motion to the court for one of three orders: first, supervision; second, reimbursement for expenses actually incurred; and third, mediation.

This is a new remedy which holds that visitation should be viewed as a child's right rather than as a matter of parental choice and, to our knowledge, is the first attempt in North America to address this issue.

As this is a new provision in law, it was necessary from a legal point of view to create the foundation upon which such a remedy could rest. I direct members' attention to section 1 of the bill, which is there to create such a foundation. This section evidences a change in philosophy that, while access

to the court is in the hands of the parents, it is the child's right to contact with both parents that is being enforced.

Through sections 6 and 1 of the bill, we have a right to the noncustodial parent to say that access was wrongfully denied and as well a right to the custodial parent to say that access is not being exercised.

Again, under section 6 the time period for these enforcement motions and the process to be followed is detailed. A motion for enforcement must be heard within 10 days after it has been served. This is to ensure that a hearing is provided early on and in advance of any further access denials or failures to exercise access.

Motions for relief under either remedy cannot be made more than 30 days after the alleged wrongful denial or failure to exercise access. In other words, if a parent does not move within 30 days of the incident, he loses the right to complain about that denial or failure. We did not want to see parents accumulating access denials or failures to exercise to the point where it would be unwieldy for the court to deal with the difficulties.

With respect to the hearing of the motion for enforcement, it should be noted that the remedy is based on oral evidence unless the court gives leave to file an affidavit. This is so because, as I indicated earlier, one goal of the bill is to provide a speedy and inexpensive means by which access difficulties can be determined by the court. We believe this provision will allow that goal to be met and focus the parties' attention through the provision of oral evidence on the reason for the denial or the failure to exercise on a particular occasion.

That basically completes the process. However, there are some further provisions of the bill which I would like to touch upon.

As members will be aware, the tendency of the courts and some lawyers is to provide initially that access will be reasonable. For enforcement, such an expression is virtually meaningless. As such, a parent who holds such an order is faced with the need to apply to the court for a variation order providing for access at specific times and on specific dates. To address this difficulty, section 3 of the bill allows an application to be made to either a court order or a separation agreement for a variation specifying specific times and days. By section 4 of the bill, it will not be necessary for the parent to establish a material change in circumstances.

Finally, as I indicated earlier, the bill addresses specifically the government's concerns about domestic violence. This bill contains protections in that respect. Through section 2 of the bill, upon any motion for enforcement under the new remedies, the court must consider the child's best interests. The best-interests test now directs the court to consider each person's ability to act as a parent when making any order with respect to the child.

Carrying on from that consideration, in assessing the ability to parent, the bill provides that the court must now consider the fact that a parent has at any time committed violence against his or her spouse or child, against his or her child's parent or against any other member of the person's household. Consequently, the court, through this bill, is given a mandatory direction to consider any evidence of domestic violence on motions for enforcement.

Third, legitimate excuses for denying access are now directly related to

domestic violence through the belief, on reasonable grounds, by the custodial parent that the child might suffer physical or emotional harm or that the custodial parent might suffer physical harm if the right of access were exercised.

These are some specific examples where this bill brings to the court's attention in clear, undeniable—let me try that again. My sympathies to Hansard and the rest of the members, having to follow this, but it is important that members do realize that this bill, in clear and unmistakable language, focuses the court's attention on the issue of domestic violence and makes it mandatory for the court to consider this in any motion for access and enforcement.

In conclusion, it is through these amendments that we seek to provide a remedy that is speedy and inexpensive, a means by which access difficulties can be determined by the court; to provide the court with enforcement tools other than jail sentences and fines when enforcing access orders, and to ensure that the best interests of the children are met through ongoing opportunities to learn from both parents, as is each child's right.

This bill and its amendments to the Children's Law Reform Act seek to meet those goals. I look forward to responding to any questions that may be posed in sympathy by members to the committee and I look forward to going through this public hearing process and the clause-by-clause analysis which I believe is crucially important in a bill which is vitally urgent to so many people in this province.

That felt like one of the longest types of presentations I ever made.

1120

Mr. Chairman: Thank you for your heroic effort. My voice is starting to go.

Mr. Offer: Yes, I forgot to mention that this is contagious, as we will find shortly.

Mr. Chairman: That concludes the presentation of the ministry. We have some amount of time for questions. I had a list: Ms. Poole, Mr. Daigeler, Mr. Johnston, Mr. Cousens and Mrs. Cunningham.

Ms. Poole: I always like to start with commendations. First of all, to Mr. Offer who not only has my sympathy; he has my utter admiration for facing that most deadly of problems for a politician, not being able to speak. I think he handled that very well.

I would also like to commend the Attorney General, Ian Scott, for his work in the whole family law area. As members are aware, I know Michael Cochrane was with him at the time, so he certainly deserves part of the credit. When they brought in the Family Law Act and the Support and Custody Orders Enforcement Act back in 1986, Ontario was one of the leading jurisdictions in the world with this type of legislation. I think you have certainly continued it with Bill 124.

Now to the question.

Mr. R. F. Johnston: That still will not get you into cabinet.



Ms. Poole: That will not get me into cabinet?

Mr. R. F. Johnston: Just being nice does not work.

Ms. Poole: I will withdraw my question then.

Getting on to my question—please feel free to answer this, Mr. Cochrane, if you so choose—Mr. Offer in his comments said, "This is a new remedy which holds that visitation should be viewed as a child's right rather than as a matter of parental choice and, to our knowledge, is the first attempt in North America to address this issue."

I would also put to you that this bill is a recognition of equal rights for both parents, whether they are male or female, to child care. It would seem to me that that is also an underlying principle. I am wondering if perhaps, with this type of thing and with mediation, we are going more towards the California model which currently has joint custody and very strong access provisions. Or do you see that as an entirely separate issue?

Mr. Offer: Mr. Cochrane might wish to carry on, but I think that we have to realize that through this bill, especially through section 1, we are creating a new foundation whereby there is an obligation on the right of the noncustodial parent to exercise access. Section 1 creates that new foundation. Section 6 of the bill provides remedies for the custodial parent when the noncustodial parent does not meet that obligation.

We must realize that what we are dealing with here is an order by a court which has seen fit to give custody of a child to one person but has also seen fit to give access to that child to another person. The court has determined that it is in the best interest of that child that custody and access be awarded. This bill and the amendments provide the legal foundation upon which that court order may be carried out and enforced, and we believe provides a speedy, inexpensive way in which such an order may be enforced, all of which will work towards the best interests of the child, as was originally ordered by the judge.

Mr. Cochrane may wish to comment on the whole issue of joint custody. That is a matter which has obviously been brought forward. That is not this particular bill. This particular bill deals with the expeditious, inexpensive enforcement of existing court orders on the one hand, and on the other, creating a new remedy, a new foundation with which custodial parents may avail themselves in terms of noncustodial parents exercising access.

My voice permits only that response.

Ms. Poole: Perhaps I should clarify, it is just that I realize fully that this bill is not intended to deal with custody, but I do feel there is an underlying statement that both parents have equality of rights to care for their child, providing they follow certain criteria, meaning they are good parents.

Mr. Cochrane: The only comments I would add relate to something following on what Mr. Offer is saying; that is, there is a separation between the joint-custody debate and access enforcement. I think the separation relates to deciding whether we are going to go to a whole new regime about how we make the orders in the first place and what things should be considered and

a discussion of how we are going to enforce orders that have already been made by our courts.

What is unique about the access enforcement difficulty is that we really have an order that is out, separate from the rest of the system, that in many cases we have to admit is really unenforceable. That is a question of whether we are going to take court orders that are already made, which are presumably in the best interest of a child because the court has looked at that issue already, and decide whether we are going to enforce them.

The joint-custody debate, I think, is something that is separate, especially in California. I am not even sure California knows where it is going. There has been quite a bit of change even there lately about their joint-custody rules, presumptions, evidentiary burdens, friendly parent rules and all these other features that go with a joint-custody regime.

For our purposes in Ontario, and this is where they are separate, we are talking about enforcing orders that have already been made by the courts. The joint-custody debate relates to whether there should be a better way of making the orders in the first place.

The Attorney General has made public his thoughts on presumption of joint custody. He does not favour that kind of approach at this time.

Mr. R. F. Johnston: I had the same problem the other day: I do not think you are speaking directly enough into the mike. The translators are having trouble picking you up.

Mr. Cochrane: I am sorry.

Mr. Scott has made public his opinion that presumption of joint custody is not what he thinks is necessarily in the best interests of children in Ontario at this time. There really is no conclusive evidence about whether we should go to a presumption of joint custody or not.

Going back to your original comment about the philosophy that underlies much of Ontario's family law legislation, there really is in this bill, and there has been in the past, an effort to balance the considerations of the parents. It does not look at things on a gender-specific basis. It really says, "If you are a parent, you are treated in a certain way; if you are a child, you are treated in a certain way." For that reason, there is some balance that is clear in Ontario's legislation. For many reasons, I think that is why other jurisdictions look to us.

We have a provision in our law now that says parents can come before the court and ask the court for a number of orders. They can ask for sole custody or they can ask the court to make an order that more than one person should have custody of a child, which is where the origins of our joint-custody rules are.

You can get a joint-custody order in Ontario now, but our Court of Appeal has said that orders like that should only be made where there is evidence of a high degree of co-operation between the parents and the parties are virtually consenting to the arrangement. Other jurisdictions that went the route of presumption have discussed coming back to a system that is more like Ontario's. So, I think you are right, that is a characteristic of the system.

We have tried to maintain it as a characteristic of this bill; hence, the balancing of interests between custodial and noncustodial.

In spite of all that, I do not think you can separate one important part of the joint-custody debate from this; that is, I believe much of the fuel for the joint-custody debate comes from frustration over poor access enforcement, where parents were told, "You have no power as an access parent." It does not take long to figure out that if they were joint-custodial parents, they would have a lot more say. For that reason, fuel has been added to that fire, but that is the only link in my mind.

1130

Mr. Daigeler: In one of the submissions that we have received already, and I am referring to the one from the Canadian Bar Association—Ontario, the family law section, the main point they are making is, "The access problems which the bill is designed to deal with are not general or widespread." I was wondering what your comments would be on this point. I am not sure to whom I should address this.

Mr. Offer: I think, first, dealing with this issue, I would like to wait to hear the CBAO submission.

Interjection.

Mr. Offer: I understand that.

In dealing with the question of access and whether there is or is not a problem, I think Mr. Cochrane has indicated in his initial remarks, which I agree with, that we believe there is a problem. We do suggest that it is difficult to quantify these types of problems. It is difficult to indicate how many people are not enforcing their access.

We feel that this bill, in terms of providing what we believe is an expeditious remedy and a remedy which we feel will be less expensive, will send out a message that these orders can in fact be enforced, and second, that the remedies under this bill are enforceable, that one need not rely on the contempt-of-order proceedings, one need not rely on the whole question of purging contempt, but that there are remedies that can be enforced and are enforceable.

We feel that this legislation, these amendments, will address a problem which we in fact do believe exists. I think Mr. Cochrane has indicated in his opening remarks that it is difficult to provide a quantitative type of background, but on an anecdotal basis—and we have said so in the opening remarks—there is a problem in making certain that orders which have been made in the best interests of a child are being enforced. This bill and these amendments are designed to make those orders enforceable.

Did you wish to carry on with that?

Mr. Cochrane: I was just going to say that there are no studies; that is one thing that is clear. The only other pressure points we keep track of, for example, are things like the support and custody enforcement branch. They have been trying to keep track of the number of times someone comes in and says: "I'm paying my support, but I've got an access problem. Can you help me?" They refer those calls routinely to my office or in some cases they simply walk from one office to the other. We are hearing through the support



and custody enforcement office that there is a significant number of problems with access.

We anticipated that. Part of the original submission that dealt with the need to propose these kinds of remedies said that we knew when we brought the support and custody enforcement office on line and enforcement was effective—and it is beyond a shadow of a doubt in Ontario that that program is a tremendous success—we were going to start hearing from the access parents. They were going to say, "If I have to pay, then I'm going to want this other part of my order enforced." We have heard, by letter, by telephone call, by referrals from support and custody enforcement. Those are the little things we can keep track of, but it is not a statistic we can use, unfortunately.

Mr. R. F. Johnston: I have several questions. May I ask initially why the Attorney General's office has conducted no studies or sponsored no studies in the last couple of years that this has been brewing to get a statistical base for some of the presumptions involved in this act?

Mr. Cochrane: I suppose part of it is a financial consideration. Part of it, too, is that these are difficult things to measure. There were efforts, I understood, afoot in the official guardian's office to try to keep track of what kinds of orders were made by which courts at which point in the proceedings and who was benefiting from the court orders, but it is a very difficult thing to keep track of. I wish we could have done it for the Family Law Act. It is just really a sad part of family law development that we are forced to rely a lot on anecdotal experience.

Mr. R. F. Johnston: It is not just family law, unfortunately. From 10 years in this place, it is something that happens in social policy deals and probably the others I am not as involved with on a continual basis, whether it is education or community and social services or whatever. We continually move because of responses from various parts of the community out there, the professional communities, and anecdotal information, but we do not do the kind of backdrop.

It seems to me that when you talk about money, the process of putting through legislation is expensive. The process of changing our court system may be quite expensive, which is one of the things I wanted to ask you about. I find it strange that we did not do things like set up immediately the notion of collecting data from the custody people in order to see how many requests or complaints about access are being raised by people in the support order side of things. There are a number of ways we could have collected statistics over this last little while which would have been quite useful in this thing. I am just kind of surprised that none of that was done.

What studies did you do in terms of the impacts on the courts by moving to this new system of the 10-day approach, given, I think, the reality in parts of the province in terms of the demands on court time and judges' time at this point? You have made the argument, I think, about going through superior court judges at this stage with contempt and what that might do in terms of delay, but what about the impact on the court system of moving to your 10-day approach? What work have you done in terms of projecting that?

Mr. Cochrane: Again, there was not a study done that measured that. The way we usually determine internally what the anticipated consequence for the courts is going to be is to ask what is known as our courts administration division whether it thinks a particular turnaround time for a motion is

realistic. In actual fact, where we got the three-day date in the first bill was that they said they thought they could turn them around that quickly. The second time around, with Bill 124, we were told that maybe a 10-day period was more realistic.

Mr. R. F. Johnston: Maybe you should ask them again today.

Mr. Cochrane: We are not expecting there is going to be a significant consequence in terms of workload for the courts for two reasons. One is that from what the bar tells us, if you believe the Canadian Bar Association brief on the point, there are not going to be many disputes like this that will come forward to use the courts, because it thinks there really is not much of a problem. Our information is different, because what we hear from the parents themselves is that they have pretty much given up on the system and that is why the lawyers are not hearing about it any more.

But the other part of it is that this kind of remedy may, and this is where we are hopeful, economize the use of judicial resources, because it makes the ability to negotiate in advance of the court hearing so easy that I would expect that anybody who is using a contempt remedy now for access enforcement will never use it again unless it is an extreme case of noncompliance, which is what the contempt remedy was designed for in the first place. It is expected that it may economize judicial resources rather than use them up.

Mr. R. F. Johnston: I think it is significant that there is a major disagreement on that but no background study has been done to check that out.

I want to try to understand this. Somebody separates and they now know this act will be in place; let's say this passes. They make a separation agreement at that point and then there start to be access problems of one sort or another. This has not been done by a court order at that stage but has been done by mutual agreement. Does the same process apply to those people as it does to others who have already gone through and had a court order? Is their agreement equal to that of the court order that exists for somebody else?

Mr. Cochrane: The contents of the separation agreement?

Mr. R. F. Johnston: Yes.

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Mr. Offer: They can file the separation agreement. There is a point that has to be made in terms of the separation agreement. Many separation agreements dealing with custody and access discuss access in terms of its being "reasonable," which in terms of enforcement is meaningless. How can one hope to enforce something which is said to be just "reasonable"?

This legislation, I believe through sections 3 and 4 of the bill, will allow the parties not only through a provincial court order, but also through a separation agreement to come before the court and have that term "reasonable" changed to something dealing with specific days and times. Obviously, this will make it more enforceable.

Second, in doing so they do not have to show through proof that there has been a material change in circumstances. This is an onus that they may not be able to meet. All we are saying here is that family provincial orders and

separation agreements may be enforced under this bill in order to get expeditious enforcement of access rights.

Mr. R. F. Johnston: I was not leading down that road. Maybe I can get it from Mr. Cochrane's response. What I am interested in is the status of the separation agreement.

Mr. Chairman: We have two other questioners and I would like to make sure they get in.

Mr. R. F. Johnston: So would I. I am sure they would like to get on. Are we not here to get answers? We have lots of time. We can stay a little bit late; I do not mind.

Mr. Chairman: Well, we can come back to you. I just want to make sure Mr. Cousens and Mrs. Cunningham get on with their questions.

Mr. R. F. Johnston: I am sure they will get on with ample time. What I was asking about is the assumption of the validity of separation agreements in this process. The problem I have with that, again, is all anecdotal stuff, but there is this notion of separation agreements being such complicated matters and sometimes being developed through all sorts of coercive reasons.

The access question and an agreement of that sort arise for all sorts of reasons. I am wondering what the status of those documents is, say where they are very specific, four days, a month or whatever kind of agreement it might be as they go to the court. Does it have the same status as that which has been ordered by a judge? Is there a presumption of noncoercion etc. in those documents as they go before the courts in this case?

Mr. Cochrane: It will not take long to deal with this.

Someone can take a separation agreement, whether it is drafted before or after this legislation is enacted, and file it with the court. The provisions in the agreement that deal with access will be enforced as if they were an order of the court.

The second part to that is that this is the same way we treat the support provisions of separation agreements. We said under the Support and Custody Orders Enforcement Act that in section 35 of the Family Law Act you can bring in your separation agreement, file it and we will enforce your support agreement the same way. There is a presumption, if you like, of noncoercion on that. I do not feel any insecurity in that because the vast majority of agreements that are negotiated in the province are done with the assistance of counsel.

The other reason I do not feel any insecurity about it is that even once it is filed, and even once someone goes to enforce a provision in it, the best interests test that is in the Children's Law Reform Act, as Mr. Offer was pointing out earlier, is still the overriding consideration. So if your agreement says something that the court thinks is not in the best interests of the child, the court is never bound by it.

Mr. R. F. Johnston: The final thing is just on this—

Mr. Chairman: I think we should go to Mr. Cousens, then back to you if there is time.



Mr. Cousens: Our party is pleased that there are going to be some public hearings as scheduled and that we will have a chance to take it further in committee. We have prepared some amendments that we believe will affect grandparent access, mediation and some other parts of the bill as it has been presented to the House.

I guess the real worry we have is whether the people who are coming to make presentations have any reason for optimism that the Liberals who are on this committee and others will be able to act according to their consciences and vote according to that or are they going to be whipped into something? To what extent are you going to be open to amendments?

I sensed as well that Mr. Cochrane's statements were such that he felt the bill was just about perfect.

Mr. Cochrane: Very close.

Mr. Cousens: That worries me in the sense that I like his confidence but it alarms me. I have little red lights going on in here that are saying, "Why bother?" We want to do the best, but I do not think we have reached that yet. I apologize if I am putting words in your mouth.

Mr. Offer: I think there was a question there in terms of the public hearings process. I would like the member to be assured that we realize how important this bill is to so many people and that we look forward to this public hearings process. We look forward to hearing the comments and the concerns there might be on this bill and how it may impact on them. I cannot comment in terms of, after the public hearing process, what the clause-by-clause analysis will be, but rest assured that the public hearings process is there to serve an extremely important function and I look forward to that.

Mr. Cousens: Just on that score, do you have any amendments you are prepared to bring forward now, even before this, so that we can get some sense of the spirit in which you are coming into it? You have had a year in which this has been out, since April 26. I just wonder whether or not there are any changes or additions, or is the perfection from then still standing today?

Mr. Offer: In terms of some amendments at this point, we will share them with the members of the committee. We do have two of a housekeeping nature that we will have by this afternoon, I think, if the staff can provide copies of those amendments so members will have them, but they are of a housekeeping nature.

Mr. Cousens: Let it go on the record that I, for one, stand eager to see progress of a very significant nature made, as it will be with this bill, along with certain amendments that have been considered and I am sure will be brought forward. I really hope the government will not be as closed-minded on this subject as it has shown itself to be in other work that has gone on in this Legislature in the committee structure. I would just say that we are sitting, we are watching, we are hoping and we keep on giving that opportunity, but I hope you are able to support some of the other amendments that are not just housekeeping.

Mr. Offer: As always, Mr. Cousens, you leave me speechless.

Mrs. Cunningham: My concerns are along the line of Mr. Cousens's. I guess from a practical point of view we will probably, for the first time, be

hearing from people who have worked in custody and access projects and in fact have some research, and that will probably be most important to the deliberations of the committee.

I can speak to a number of parts of the bill that idealistically look pretty good, but if you take a look—I suppose anything that falls in place under clause 35a(2)(c), where you are looking for reimbursement from the people who are involved in these cases and the people do not have money—in some of the custody and access projects, if somebody has to visit somebody and he spends money and the other person is on family allowance or whatever and has no money to reimburse him, and some custody and access projects tell us that people do not have money, 90 per cent of them do not, those are the kinds of things I would hope you are looking for.

Then do you make it a law? It does not work, and it is frightening to people to know that it is sitting out there and therefore deters people from even going after the things they should have on behalf of their own children.

I believe those are the kinds of examples we are going to hear and those are the kinds of examples that I think the administration should be looking at objectively. I have sat in that position myself from time to time, as others have, and there is a sense of ownership around it.

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There is also, I think, a tremendous sense of commitment on behalf of people who come before this committee, for two reasons. First of all, it takes a lot of courage to share the kinds of things we are going to hear on behalf of individual witnesses—a lot of courage. The second part is that people who work in this field, as part of their profession, are people tremendously committed to families. When they come to us, they come with some serious suggestions that they hope we will consider.

So although I agree with Mr. Cochrane and compliment him on his work, and certainly know of his expertise, which I think we are very fortunate to have, I hope that particular department will be looking most objectively, and probably over some period of time, at possible further amendments that the government could bring to us. I say that very seriously because I think one of the biggest problems we have in law is that laws are too idealistic. There is too much written down and that is a deterrent to the quality of family life in this instance, in itself.

Therefore, Mr. Chairman, as a member of a committee that did not listen and could have listened on another issue, I would say just from my own personal bias that this issue is also a family issue and one where I see us making some small, but important, amendments together. I hope many of them will come from you, as a result of the input.

Mr. Chairman: Are you getting to the question?

Mrs. Cunningham: Well, I suppose I could ask a question. Given what I have just said, is there room for that kind of work in this committee?

Mr. Offer: Do you want an answer? Certainly. I think Mrs. Cunningham should be aware that with respect to the reasonable expenses—

Mrs. Cunningham: That was just one example and probably not my best one. It was just the one that happened to be sitting before me.

Mr. Offer: I understand. With respect to any of the four orders that may be issued to the noncustodial parent or the three orders that may be issued in terms of the custodial parent, it is up to the court to do so. Overseeing everything is, "What order or orders can and should be issued, while keeping in mind the best interests of the child?" I do not think we should for a moment forget that is the doctrine, the principle, that oversees everything.

I know of the examples you have brought forward, and without assuming what we will be hearing, we may in fact hear some of those examples. But we, as a committee, certainly must always keep in mind that these orders may be issued by a judge, while keeping in mind what are the best interests of the child. On that basis, I look forward to the public hearings.

Mrs. Cunningham: The response concerns me a lot, because when you put in writing what judges have to look at, they look at it. Many of the judges out there are not as informed as people who are working in many of the projects, and the judges rely on the expertise of mediators. Never mind the word "mediator"; you can talk about anything else. You can talk about a supervisor in a custody and access project. You can talk about a social worker. You can talk about almost anybody who works with families.

What I am saying is that the more you write in here to give guidance to judges, the more many of them will look at this. Those are the ones we are worried about, not the ones who have worked for years in the field and who are looking for advice. The more you put down, the more they think they have to do, the more they think they have to write—we are all obsessed by this stuff—and the more ideas you give them. When you give somebody an idea that he should slap a payment at somebody, he does it. They say, "Look down here," and they go through the whole thing. I went through this on Bill 114.

I am saying that in some instances it is better not to have it in legislation. That is all. Never mind the best interests of the child; that is a given for everybody in this room.

Mr. Chairman: You have a second.

Mrs. Cunningham: No, I think Mr. Offer should respond to my remarks.

Mr. Chairman: Okay.

Mr. Offer: I think what the member should realize is that with respect to this bill, what we are doing is centralizing remedies that have in many ways already existed in terms of mediation, in terms of supervision, in terms of compensatory access, purging of contempt. We are centralizing. We are directing judges—yes, in a mandatory way—to take into consideration domestic violence.

Mrs. Cunningham: That's a good one, by the way.

Mr. Offer: Did Hansard catch that?

This bill is important because it does centralize those remedies, it does bring to the fore the whole question of domestic violence and it does make it mandatory for a judge to deal with that issue. We are providing a new



foundation of remedy for the custodial parent to make certain that if a judge has ordered access for the noncustodial parent, the access be exercised and not be wrongfully denied unless there is a legitimate reason, examples of which are in the bill.

We think this bill is important. We believe the bill does meet some very important goals, does allow orders which have been made to be enforced and does allow those orders to be enforceable. I think as we go through with these public hearings we will probably continue on with this debate, but I think we are saying the same thing in terms of the purpose we wish to meet. I guess these public hearings will just be used to carry on with that.

Mrs. Cunningham: Just as a closing comment, I am not encouraged, because I do not think the government needs to be defensive about this legislation. It is good legislation. There is room for improvement and that is all I want the opportunity for as part of the process, if you can keep it in mind.

On the terminology of centralizing remedies, if we did have good research, we would find out that some of the things we thought were remedies in fact were deterrents and do not work and therefore you do not write them into legislation. That will be the kind of information, I hope, that I will be able to bring to the committee as a member based on the work I have done and the work I hope to do, but I refuse to go out and work as hard as I did on another committee if the government is not open to suggestions for change.

All I need to be reassured of is that there will be opportunities to put not only the amendments that we already have before us, but new ones, and that they will be seriously considered by the administration—the members as well of course but, more important, by the administration. Quite frankly, they should be the experts and they should know how to advise us based on our suggestions for change.

Mr. Chairman: Members should be aware that in addition to the information provided by the ministry, the committee has at its disposal the very capable research assistant Susan Swift to draw upon when we conclude the hearings and get into the clause-by-clause discussion, etc.

Mr. R. F. Johnston: I would like to see if I can squeeze a couple of things in, if we can do it quickly. I have serious doubts about legislating in this area, I really do. I think that thinking of legal redress as the solution in this particular aspect of law is like expecting every judge to be able to read one of these documents like Solomon and know exactly what to do. I think much more important are our facilities outside of this in terms of access, making it easier for people to feel comfortable with the system. That is something we will come to, I think, during the hearings.

There are a couple of things I am still not clear about in terms of the backdrop to this, and that is what I hope we are going to try to get here today, the role of the child in all this. In the first part of the bill, the role of the child is laid in, the wishes of the child recognized as part of the whole best interest of a child. This puts it in some connection with the Child and Family Services Act and other legislation we have in the province at the moment.

But the panacea of expecting judges and others to always act in the best interest of the child and then come up with just results is something that, I would remind the parliamentary assistant, is in the present legislation, has

been in our legal legislation for children now for a long, long time and has not necessarily always given us decisions that are in the best interest of the child.

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I therefore wanted to ask you why, under subsection 35a(4), where you list your denial of access as wrongful unless, and the reasons, there is nothing in there which recognizes again the role of the child in terms of not wishing to have access. Even if it is in a limited kind of fashion, as might be done under the Child and Family Services Act in terms of age and that kind of thing, there is no recognition in that listing there of the child's interests maybe having been used as a reason for denying access and that being something which must be weighed by a judge at that element rather than in the best-interests override previous.

Mr. Offer: Mr. Cochrane may wish to carry on, but in clause 2(2)(b) you will see, "The child's views and preferences" are to be taken into consideration, "if they can be reasonably ascertained." So indeed the child's interests, if they can be ascertained within reason, are to be taken into consideration.

Mr. R. F. Johnston: Not in your list under subsection 35a(4). I do not understand why they are separated out and given less status, in my view.

Mr. Cochrane: It is not meant to have less status. I guess there are two parts, really, that we have to understand about it, and this is how the proposed remedy plugs into the existing legislation and how, as Mrs. Cunningham was making the point, it is accepted that the best interests of the child override everything.

What happens is that a parent would make an application for enforcement of the order. The court would say to the custodial parent, "Why did you deny?" I am looking at my list of examples, which is not intended to be exhaustive. "Look at the list of examples. Do you fit under any one of those?" They may or they may not.

In that whole process, as the court turns to examine it, even if it wants to make a finding that access was wrongfully denied and it turns to look to what is in the best interests of the child—and this is probably a case of where it would be good to direct the court's attention to a particular point—the judge has to look, as a part of that consideration, at what the child wants. It is not intended to downplay it; if anything, it is always the overriding consideration that the court would be looking at the child's preference as a part of the determination.

Let's say, for example, that the noncustodial parent is very convincing with the court and says, "I came on Saturday at 10 o'clock when I was supposed to come. I was on time. She gave me a reason at the doorstep that is not a good reason, and you agree with me, court, that access should not have been denied," and the court then says, "Thank you. Now in making an order, I am going to look at the child's best interests. How does the child feel about this?" and the child says, "I did not want to go anyway." That is how it would come in under clause 2(2)(b), assuming the child was in a position to communicate his or her opinion to the court.

The other thing, too, is that the courts are cognizant of this. I had a personal experience with it myself when I was in practice. The child's views

can not always be determinative. I had a case myself, when I practised family law before I joined the ministry, where a 12-year-old daughter did not want to go for access with the father. We followed through the contempt process five, six, seven times without success and finally got an order that the access was to be with the child and they were going to attend for therapy together. It was after the second visit that the child was able to finally blurt out her wishes that she really did want a lot of access, but through the animosity between the parents, she had not felt comfortable expressing that opinion.

I think the courts are aware of situations like that where they cannot let the child call the shots, but there is a mandatory direction through the best-interests test for the court to look at that.

Mr. R. F. Johnston: We will get into this when we hear from people, clearly, but we have dealt with this quite differently under other legislation in the province in terms of adoption and the role of children and making major decisions about who is going to be the parent. It seems to me we have done less than that in this section.

Given what we know about sexual abuse and the difficulties of getting evidence on that kind of thing and all those other aspects that are out there, I really worry that we have not reinforced that section enough.

Mr. Chairman: We are scheduled to begin our hearings at 1:30. As a subcommittee, when we scheduled the people who requested to be heard, we found we had to limit the presentation time to half an hour for groups and 15 minutes for individuals to fit everybody in.

It was your wish today to try to fit some additional people into the remaining time slots. As a result, we are going to have to be fairly tight to those times to hear everyone. I would urge the members of the committee to be prompt in attending at the beginning of a scheduled time, 1:30 p.m. or 10 a.m., so we can begin on time.

Second, since the main purpose of the hearings is to hear from the presenters, I would request that members of the committee, in asking questions, ask questions to help clarify and illuminate the presenter's position rather than using the opportunity to express personal views or opinions, because that will only take away time from the presenter. If we follow that guideline, we should get through and hear from everyone who has asked to be heard within the four days.

Mr. R. F. Johnston: I think we also should proceed on time, when you are here, if you see an adequate number of members here, whether it is the traditional quorum or not.

Mr. Chairman: Is that acceptable to everyone? We will resume at 1:30 p.m.

The committee recessed at 12:05 p.m.





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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHILDREN'S LAW REFORM AMENDMENT ACT

FRIDAY, APRIL 7, 1989

Afternoon Sitting



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Clerk pro tem: Manikel, Tannis

Staff:

Swift, Susan, Research Officer, Legislative Research Service

Witnesses:

From the Coalition of Children's Advocates Against Wife Assault:  
Samsa, Silvia, Children's Advocate, Interval House, Toronto  
Scott, Donna

Individual Presentation:

Armstrong, Joe C. W.

From the Canadian Council for Co-parenting:

Girt, Hilary, Co-President  
Rosove, Bruce

From the GRAND Society:

Brooks, Joan, President

From the Ministry of the Attorney General:

Cochrane, Michael, Counsel, Policy Development Division

From In Search of Justice:

Virgin, Ross, President

From the Child Parent Access Task Force:

Gullen, Joan

From the Human Equality Action and Resource Team:

Morris, Gordon, Secretary-Treasurer



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Friday, April 7, 1989

The committee resumed at 1:33 p.m. in room 151.

CHILDREN'S LAW REFORM AMENDMENT ACT  
(continued)

Consideration of Bill 124, An Act to amend the Children's Law Reform Act.

Mr. Chairman: Ladies and gentlemen, we would like to start the meeting. This is a meeting of the standing committee on social development, called to hear presentations regarding Bill 124, An Act to amend the Children's Law Reform Act.

Presenters have been allotted either one half-hour or 15 minutes. Presenters representing a group will have a half-hour; individuals, 15 minutes. We have done that because the Legislative Assembly has given us four days, and we have attempted to fit everyone in.

I would like to call the representative of the Coalition of Children's Advocates Against Wife Assault, Silvia Samsa. You have one half-hour, to divide the time as you wish. You may take the full half-hour for presentations. Members of the committee, however, may wish to ask questions, so you may shorten your presentation and allow some of that time for questions.

COALITION OF CHILDREN'S ADVOCATES AGAINST WIFE ASSAULT

Ms. Samsa: As a representative of the Coalition of Children's Advocates Against Wife Assault, I would like to express our dissatisfaction with Bill 124. Our group is composed of Metro area shelter children's advocates. Collectively, we have worked with over 5,000 children. Although each story is unique, the common thread for these children is their history, a history of fear and abuse.

Our first concern with Bill 124 is with section 1, subsection 20(4a), "in the best interests of the child." As children's advocates, we would like to pose a question: Is it in the best interest of the child to have access visits with a father who has been physically, verbally or emotionally abusive, either to the child or the mother? What is the abusive father modelling not only to his male children but to his female children? A child living in a violent home soon learns that the only effective method of problem solving is a violent one. It is these children and all the children who are not counted in statistical data that we represent today.

Studies have proved that growing up in a violent home affects a child psychologically, developmentally and emotionally. This come from research by Dr. Peter Jaffe, Dr. Wolfe and Dr. Wilson, 1986, the London Family Court Clinic. A relationship with an abusive father is one based on fear and powerlessness, not on mutual respect. I would like to clarify that, as children's advocates, we strongly feel that wife assault is a form of child abuse. Promoting a relationship with an abusive father is not in the best interests of the child. Unless this parent is made accountable for his violent behaviour, he can never be a good parent.

Our role as children's advocates is to be supportive and available to enhance a child's personal growth. We provide various forums for discussion and time for children to understand their feelings. We listen to the stories the children tell us: stories of living in fear—fear that their mother will not be alive after that horrible argument; stories of guilt—if only that bicycle had not been left in the driveway, dad would not be angry at mom; stories of anger—anger at living in a home where each day is unpredictable and which never feels safe.

We have worked with children who have been forced, through court orders, to see their fathers. One child, a five-year-old, clung to the door of the shelter and begged us not to send her off. To refuse her father access would have been in contempt of court and her mother would have been charged. Watching her go with her father was one of the most painful experiences of my life. I wish I could say that these stories are the exception rather than the rule, but they are not. This bill does not acknowledge a child's fears in seeing the abusive father. What may appear as trivial or fantasy to others is very real for a child who has been affected by wife assault. We must never forget their reality.

In subsection 24(3), "in assessing a person's ability to act as a parent, the court shall consider the fact that the person has at any time committed violence against his or her spouse or child" is certainly a landmark statement due to the fact that violence is seen as a contributing factor to one's parenting abilities. This paragraph should be added to the Children's Law Reform Act. The rest of the bill is harmful to the very children it wants to protect.

Mediation is referred to in three sections: subsection 31(10), section 35a(2)(d) and section 35a(6)(c). Mediation implies that both parties are of equal party. We feel that it is almost impossible for any woman who has been abused to feel safe enough to discuss her opposition or concerns about her mate's relationship with the children. Many abused women are quite isolated, and the conspiracy of silence prevails. Promoting mediation between an abuser and an abused woman is not only threatening but detrimental to the safety of the woman and the children.

As children's advocates, we strongly believe that children as individuals have rights, one being the right to live in an environment free from violence. If a child expresses trepidation in seeing her father, the court should pay close attention to the concerns. In whose best interests is the access? Certainly not the child's.

As front-line workers, we do our best to undo the damage inflicted on these innocent victims of wife assault. We implore you to do the same. On behalf of the coalition, I would like to thank you for your time and consideration.

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Mr. Adams: On a point of information, Mr Chairman: Does Hansard have a copy of this written text or in fact does it operate simply from the voice?

Ms. Samsa: I have made 25 copies.

Mr. Adams: It was just that there was one sentence that you read where you said "both parties are equal parties" and it says "of equal power" in the text. I think that is an important point. That is all.

Mr. Chairman: Hansard does have copies of the texts which we have. Thank you for your presentation. You have left considerable time for questions, so we should have a good exchange.

Ms. Poole: Thank you very much for your presentation. I am sure all members of the committee sympathize with your viewpoint on violence and the fact that it cannot be tolerated in our society and that victims of violence do deserve protection.

After the first several pages of your brief, you indicated that subsection 24(3) is a very strong statement and that you are very supportive of its being in the act. But I still get the sense that you feel that this is not going to resolve the problems of violence as far as a violent spouse having access to the children is concerned. I was quite surprised by that, because I was very heartened personally to see this provision in Bill 124. I see it as a very strong tool to prevent a violent spouse from getting access to the child. Would you like to comment on that?

Ms. Samsa: A lot of the women we have worked with have never told anyone that they have been in an abusive relationship. When a woman is being abused, it is very isolating. For a lot of women, when they come to the shelter the first time, it is the first time they have broken that conspiracy of silence. What we are really concerned about is that a lot of women will not in any type of situation talk about being abused. We have seen a lot of women who have gone to counsellors and the counsellors have talked to us and have never realized that there was an abusive relationship involved.

We are quite worried that women who are in abusive relationships are too scared and too threatened to even talk about the violence, in court or in any other type of system. Unless they have some type of support around them, have been at a shelter or have gone to some type of counsellor who is understanding of the issues of wife assault, their life situation or their home situation is very quieted by the whole sort of system that violence is acceptable by law to people.

Ms. Poole: Do you not feel that the provision in Bill 124 which deems it acceptable to have verbal testimony instead of having affidavits and a lot of the very comprehensive documentation would take some of the intimidation out of the process for the person, if she feels that the process is more informal and that she can just verbalize her fears as opposed to having to go through a written rigmarole?

Ms. Samsa: No, because I have been to court with many women who have been absolutely terrified to talk about the violence and who have been threatened by their mates that if they talk about the violence they will be killed. They would much rather be quiet about the violence than face the fact that they or their children might be killed at some point.

Really, I have gone into court many, many times when women have just been very silent about what has been going on and have been threatened by their abusive husbands. I think the whole issue of a man who is abusive is his family is under his control. That control will be shifted. Wherever this woman is, he will try to follow her and her children, he will try to use any measure possible to make sure that she is still under his control, even though she might have left the relationship.

Ms. Poole: Do you have any sort of statistics which would give us an idea of how many women are in this particular situation? I presume it is primarily women who would be operating under this threat.



Ms. Samsa: You mean in terms of women who have actually gone to court or who have been terrified of saying anything about the violence?

Ms. Poole: That is right. I do not know whether, of the battered women who come to you, 50 per cent are in this situation or a small minority. What is the situation?

Ms. Samsa: Of women who are terrified that something is going to happen?

Ms. Poole: And who will not speak out because of it.

Ms. Samsa: I would say 90 per cent. A lot of women will not take any legal action in terms of restraining orders. Out of the 500 women we have worked with in the last three years, only two have asked for restraining orders. The rest of them are absolutely terrified of having to charge their husbands with the whole fact that they have been abused by them. Women are quite terrified of doing that.

Ms. Poole: Mr. Chairman, in recognition of the time constraints and the fact that other members have questions, I will let someone else go.

Mr. R. F. Johnston: Mr. Reville said to me, "Can you imagine people trying to protect themselves with a restraining order?" I agree. What about the statistic that used to be around that as many as 60 per cent of the women actually go back to the abusive situation rather than taking any of the remedies that are there presently? What is that at these days? Has that changed much?

Ms. Samsa: At Interval House, our statistic is now saying that about 55 per cent of the women return to their mate. The stats are still holding. A lot of women will return home. So the whole issue of trying to file a restraining order and going back to an abusive relationship, giving it one more try when you have asked for a restraining order, is quite scary.

Also, a lot of restraining orders are \$100 fines. There is really not a lot of judicial pull behind them, and some women who have had restraining orders—I heard of one story where a woman did call the police and it took them an hour and a half to get there. In an hour and a half, someone can do a lot of damage.

Mr. R. F. Johnston: Your basic position is that the amendment to strengthen the present act to at least refer directly to domestic violence is a positive thing, but it is the only change you are advocating at the moment.

I know you are coming from a very particular perspective, but do you not think there are other things that should be done around the access question these days? Whether it should be in legislation is another matter. I know you are coming to protect the particular group you are talking about; I hear you on that. But I am just wondering if there are not other things?

For instance, not to put words in your mouth, should more nonlegal remedies be there, like more supervised access situations like the Lakeshore Area Multi-Service Project? Are there other kinds of things you think are better than what is being proposed, or do you think there are no other problems outside of the ones you are putting to us?

Ms. Samsa: Definitely, I agree more supervised access would be quite

ideal for a lot of women. It is very hard. Often the shelters are used as the supervised access point and that puts us in danger and puts the children in danger in terms of safety. I think more supervised access areas would be quite beneficial to a lot of the women we serve and to the women we do not serve, the women we do not see out there. We see a very small majority of battered women. One statistic stated that we might see only 10 to 15 per cent of all battered women, so where are the other 85 per cent in Toronto? Who is helping them and who is serving them?

Mr. R. F. Johnston: How do you deal with the issue that was raised this morning by the ministry, that one of the underlying concepts here is the notion of right to access for the child as a principle, forgetting if we can the problems of domestic violence at the moment; that it is a principle that needs to be laid out in law? How do you respond to that as one of the reasons for moving towards some changes in access as it works now and in court remedies, the contempt approach essentially, which just do not seem to work?

Ms. Samsa: What happens, what I have seen with the women I am dealing with, is that it is not an equal situation. In situations where there has been a lot of equality in terms of power and mutual respect for the child, I think it can work out. But with the population we are serving, this is not working out. It is not: "Okay, you take the child Friday. It's really okay and we can work everything out." That does not happen with us at all. It could work for that ideal family, but how many ideal families are there out there?

Ms. Scott: The other point I could mention is the situation where at times the male is using access to the children to actually get back at the woman. That is another power tool that is just being used.

Mr. Chairman: Silvia, could you introduce the other member of your delegation?

Ms. Samsa: Sorry. This is Donna Scott, who is also a member of the coalition.

Mr. Chairman: Thank you. Does anyone else have a question?

Mr. Offer: Thank you very much for your brief. Bear with me; I have laryngitis.

You indicated the example where the child did not want to go. There was some fear of physical if not mental abuse, psychological abuse. I wonder on the example you provided what your thoughts are in terms of this bill providing, as a legitimate reason for the denying of access, the right that the custodial parent believed on reasonable grounds that the child might suffer physical or emotional harm, and what your feeling is about putting in legislative form that type of reason for the basis of legitimacy for denying access.

1350

Ms. Samsa: I think it is something that is going to be very hard to prove. It is again your word against mine. I can say the child was very upset and this is what happened and your word could be. "That's not true. That's a complete lie." I think it is again whose word is going to be much more valid in court and that is the concern I have.

Mr. Chairman: I have one question. Would you tell us a little bit about the group you represent, how many workers you have and how many people you serve? I am trying to get a sense of what is represented by the brief you have given us.

Ms. Samsa: Okay. As a group, we have been meeting since 1984. We represent the shelters in Metro—well, from Yellow Brick House all the way to Interim Place in Mississauga. It is all the staff who work with the children in the shelter. A lot of us have been working for three, five, six years. As I say, collectively we probably serve over 5,000 children, and we meet on a monthly basis. We have been sponsored by the Ministry of Community and Social Services to write a manual on the effects of violence on children. We have done various workshops throughout the province on the effects of violence on children.

Mr. Chairman: Thank you. If there are no other questions from the committee, I thank you for attending. I will give you an opportunity to make some closing comments if you wish, because you do have some time left in your half-hour.

Ms. Samsa: No, I think that is fine.

Mr. Chairman: Okay. Thank you very much for coming in front of the committee today.

That permits us to move ahead if Mr. Armstrong is here. For members of the committee, it is the blue book you have been given.

I should mention as well that our clerk and I discussed this morning about distribution of these briefs to members of the committee. Because of the short amount of time presenters have, in particular the individuals with only 15 minutes, it was the feeling of the subcommittee that if possible, individuals and delegations should be encouraged to give in their briefs ahead of time and we will circulate them to members of the committee. It would allow you from now on to read them before you come into the meeting. It would give presenters some greater flexibility in perhaps saying a little bit less, knowing that members have had a chance to read the brief, and would leave more time for questions.

However, if we do that, I urge members of the committee to remember to bring the briefs with them, because that is the one risk we take: The briefs may not all be here at the time the presentation is being made.

Mr. Armstrong, you heard my advice to the previous delegation. You have approximately 15 minutes. You may divide it as you wish between presentation and questions. Welcome to the committee.

JOE C. W. ARMSTRONG

Mr. Armstrong: Thank you very much, Mr. Chairman; indeed, thank you all. Mr. Chairman, I am glad you confirmed an instance of access denial, because having tabled this report, on request, to the clerk, Todd Decker, and having sought from him specific advice as to how best to present a brief like this, I was assured, having submitted this brief some 10 days ago, that members of the committee at this juncture would have had an opportunity to review my remarks. In context, therefore, I would have hoped that at this point I would be here merely to introduce myself and make myself largely



available for questions.

To some extent, I feel this is rather a bit of a feckless exercise in view of the amount of time and effort that has been put into this substantive brief, but I am here and I do not propose to waste the time. Therefore, I would like to do what I was going to do on Mr. Decker's advice, spend some five minutes at least covering the substantive elements of the way this brief is constructed and why. You have it before you. It is the blue brief with a white label and a Cerlox black binding.

I have been involved in this issue as an individual for some time, and I thought, in view of my experience with Bill 60, my experience with Bill 14 and some of the other aspects of this, and a long track record of difficulties that I have personally experienced, that now this problem is no longer one on which I really have any dealings before me, it would be of interest to the committee to have, from my bias, from my point of view, some comments made and specifically laid out as to my perception of what the problems really are.

My brief is broken into three parts. I would like to make a comment on each part. The first part of the brief is a perspective. This is an individual perspective from my point of view and my experience, and also of course from others I have known who have had and shared this problem.

In so doing, first of all, I want to kick off my opening remarks by making it absolutely, fundamentally clear that I am fully supportive of this initiative. Bill 124, warts and all, and it has warts, is a marvellous first step. But I would also encourage members of the committee to see this within the full social context of social development as being part of a process.

I think it was Mr. Cochrane who was asked this morning something about the custodial environment scenario and whether or not we had reached that stage with regard to the experience in California. We may not be there yet, but it is certainly something that I think is going to face all of us as an issue in the not-too-distant future. I have to tell you that I am personally very concerned—in finishing off this business of the perspective, I am encouraging all to see Bill 124 as part of a three-part process. There is Bill 14, support enforcement, which took place.

For those who have serious concern as to the lack of information upon which Bill 14 was put into place, I would say we have very similar circumstances as to the direct lack of evidence there is. In running about the libraries in social development—the Metropolitan Toronto Reference Library—and trying to find anything of substantive great worth on the subject of access denial, the situation is intellectually bereft of detail and factual information that I think would be materially helpful to the committee and any judicial committee trying to form legislation.

None the less, it is important to understand Bill 14 with regard to support enforcement and just how forceful a piece of legislation that is with regard to supportive custody and enforcement of payments. I think there has been the accusation made this Bill 124 indeed is really a sop being offered with regard to access denial. I am not that cynical about the view of those who have put so much effort into this bill to think that is the case. Clearly, it is the children who are in focus, and that is the one most important focus that must be maintained throughout our entire deliberations.

The third step I mentioned here, after Bill 124, has to do with custody.

Now leaving aside the general environment I am seeing with regard to the future and the contextual nature of this bill, I would also ask you to pay particular attention to those parts of the access denial scenario and the environment I have described as a needless civil war. I am not unaware, as an individual, that there are many cases where there is legitimate access denial. But is it not a frightening prospect when you think of Michael Cochrane's phrase this morning when he spoke of some 25 per cent of parents abandoning children? What an incredible linkage of legacy and destructive conduct that must mean in terms of generations and ongoing tragedy for families.

The world of custody, I have suggested to you on page 5 of the brief has a sex allocation reality to it, and we cannot be unmindful of the fact that we have statistics that are available. Mr. Cochrane, this morning, may have misunderstood how you presented your scenario, but in effect I draw your attention to the fact that we do have Statistics Canada allocations as to the numbers, at least in contested situations, where we know that the very large preponderance of custodial awards have been to the mothers. I am aware that this has changed somewhat, but there still is that reality. Were it not the case, we would not have the groups we have, male rights activists and other female rights activist groups before us, speaking to that context. In other words, it is a very adversarial environment.

1400

The substantive thrust of my brief is to hopefully ameliorate, in some of the suggestions I have made, that we get away from this or begin a process of getting away from it.

I have dealt with some of the subtleties of access denial, some of the problems, the language labyrinth, even the word "custody," which speaks in the dictionary in terms of guardianship or care but also has the meaning of imprisonment. In fact, one could actually construe "custody award" as meaning, by dictionary terms, "as an award for quality performance the right to imprison children." When you are dealing with words, as you know as legislators, there are connotations.

I have then given you some insight philosophically, on pages 8 and 9, of the problems of what can precipitate access denial and what an elusive background you are faced with when you try to legislate in this area and how difficult it is.

I am very concerned already by what I see from some of the adversarial players. I was most disturbed that the Canadian Bar Association tabled in the press that it had conducted a straw vote of 100 and reported that it thinks this whole issue is a fiction. I assure you it is a very serious and substantive issue. It is not deserving of that kind of dismissal.

I do not have very much time left. I would like to deal with some of the recommendations I have made, which begin on page 12 of the brief. I am terribly confused, as a layperson without any legal experience whatsoever. I flunked first-year law and Mr. Justice Laskin, who later became the Chief Justice of Canada, said I was the worst candidate for law school he had ever met in his life. I have taken that to heart.

As I look at this entire bill, I am having an awful time trying to come to grips with where the burden of proof is about what is going on. I am speaking in particular about Bill 124, subsection 35a(4). When I first read this I had just finished Salman Rushdie's book, *The Satanic Verses*. All of the

reasons a judge could use to come to a decision that access should be denied made me think I was reading a syllabus for some other purpose than the purpose of facilitating reasonable access.

Who, for example, could possibly believe that any respondent charged with denying access wrongfully could not use the phrase that provides access can be denied where, "The responding party believed on reasonable grounds that the child might suffer physical or emotional harm...."?

I have suggested that we really are walking all over the place with confrontational language. This list is probably incomplete and generally counterproductive. I am wondering whether a simple phrase such as, "A denial of access is wrongful unless justified as legitimate on reasonable grounds," would not suffice for all the legal activity that seems to have gone on in that section.

I am disturbed by other aspects of Bill 124. It would seem, as I read it, that regardless of conduct no penalties are provided. I would not agree with what my good friend Ross Virgin of In Search of Justice has, maybe gratuitously, been picked up in the press as saying; I will leave that to him to tell you later in the day. It does disturb me when I see that there is to be no recourse other than more contempt of court proceedings. That bothers me and I am not at all content that much has been achieved without some other remedy, something in there.

On compensatory access limits that have been suggested, this disturbs me also. It is wrongful in my opinion to take the total as equivalent. Compensatory time should not arbitrarily be legislated as if it were equal. All time is not equal. It is very important for judges, in my opinion, to be able to ameliorate a situation where there has, for example, been a long period of denial of incrementally small bits of access. That bothers me. I have suggested that some latitude there may indeed be part of the success of this bill and I have put in a figure of 25 per cent. It may be, let's say, 20 per cent of additional time.

All I am suggesting to you is time is not always equal. If someone is seeing a child 150 times for 15 minutes, it is not the same as having all of that time together with one's children.

The very limited use of the bill bothers me, and to some extent Steven Offer, I think, addressed this issue, this legal concern that I have. Bill 124, and this is dealt with on page 14, says "access to a child at specific times or on specific days." This would seem to be, as I read the bill myself as a lay person, the purview and intention of the court. I am suggesting that this will actually foment a situation whereby if you do not include "reasonable access" within the body of this particular part of the law, what you will actually have done is encourage lawyers of parties in dispute to come together and force themselves into a more adversarial process.

What must be done is to try to preserve whatever trust indeture there is, even if it is only incrementally small, available between two parties on breakup as to the importance of their children. So to leave out "reasonable," as well as the specified times, to me is a very worrisome deficiency on the part of this bill.

Mr. Offer partly clarified for me his weighting of this, but still I looked at it over the lunch hour and I suggest to you that is just not good enough. The substantive part of this bill, as I read it as someone who is



going to look at it, is going to be this particular thing, and at the very least it is confusing and equivocal. I suggest to you, sir, there are more than just housekeeping items here that have to be addressed.

Thank you very much. After a decade and a half, I could go on with this, but I see that I am sticking to my time limit. If anybody has any questions, they would be more than welcome.

Mrs. Cunningham: I had a very short period of time to look at this, so my questions may get me into more difficulty, given some of my biases, but I am prepared to look openly around this piece of legislation.

On page 13 of your brief, where you are talking about the penalties, you talk about subsection 34a(4). You are talking here about the costs, as the bill does, to the person who has denied the custody. It has been my experience that where people tried, without this legislation, to be reimbursed or it was discussed in the home, it became another negative matter of discussion." He or she won't even pay me for the price of my gas or for the lunch," or for whatever it was that one paid out over the period of a day and a half when one tried to come down.

I look at it, just from my own professional experience in this field of custody and access, as being a negative where there is money involved. I know you are looking for some kind of a disincentive and I agree with you, but where there is a disincentive that is so obvious to the children, it is just another pawn to fight back and forth about and I wonder whether it is worth while at all.

Mr. Armstrong: I think you are right and that is why, in one of the issues I raised here—I hope I have made this clear—it really is the word "disincentive." I know I used the word "penalties" across the subhead of the paragraph, but the worrisome aspect of this is the arbitrariness that takes place as to the court's capacity under this legislation not to look at what is being done as a penalty, but indeed as a disincentive to that. Hence, I see that if you stick to the arbitrary here, when you come to compensatory access under subsection 35a(3), it seems to me that while it is not a penalty, it certainly would be seen as a penalty by an individual who is told: "Now wait a minute. There was wrongful denial of access here, and I think this time should be appropriately made up, not just in terms of quantum but in terms of the meaningfulness of it."

I have kind of linked the two together, but I had the same problem you have. I share that. Attempting to put cost on it is just another confrontational issue between the parties of a disputant nature, which I am not sure would lead to anything of a successful nature.

1410

Mrs. Cunningham: I share your observations, obviously. I will pursue your answer with another question, if I may. Taking a look at subsection 35a(3), where you talk about this period of compensatory access, I like what you said, because I have wasted more time with people arguing about hours and minutes while the kid is still standing there and just wants to get on with it. It is a joke, really. The real fools are the parents, and we are being pushed into it; we will be pushed into it with this piece of legislation.

I hate to say this again, but all judges do not use their common sense from time to time, as we do not, and it just gives them another little piece

of legislation to start adding up minutes and hours and days. Kids do not do that. Adults do, but not children. They want to be with their parents in a meaningful period of time. Most of them, the great majority of them, want to be with both of their parents, no matter what. So, on that one, would this not be a clause where you could use the word "reasonable"?

Mr. Armstrong: I think the word "reasonable" would be very appropriate to consider to the compensatory clause allocation, yes. There may be some very worrisome aspects from Mr. Cochrane's background and research on this; I do not know. I am very concerned that it just be that the more you attempt to fix this into precision, the more adversarial it will appear in an adult sense and the more damage will be done to the children, as I see it.

Yes, "reasonable time" is a lovely phrase, and it does put a burden on the judge providing the focus of this legislation. I think that is pretty clear in the preamble of the legislation. The issue here is the welfare of the children, not the hurt feelings of the parents and the continuance of the war.

Mrs. Cunningham: You would be interested to know how many children, if they were denied access on the long Easter weekend, would say, "I'd like to go to the zoo two weeks from now." That is all it really means, "I want to go to the zoo." It does not mean, "I want seven hours and 14 minutes and 37 seconds with my mother or my father."

Would it be appropriate right now, since we have just had a question that I think perhaps the solicitor could address, to ask, what was the thinking around section 3? Is there a reason for the exactness of that? I think it is an important question. What was the thinking that went into the writing of that particular phrase? Or Mr. Offer, sorry. I was trying to—

Mr. Chairman: I realize you are trying to address a question to Mr. Offer. However, it is Mr. Armstrong's time.

Mrs. Cunningham: Maybe I could address it after. I will refrain from my questions and pass on to someone else. I have others that I will obviously be asking. We will get that one answered on someone else's time.

Mr. Chairman: Ms. Poole, one question, and then we will conclude this presentation.

Ms. Poole: I realize time is brief, so I will ask only one question, although you did raise a number of excellent points in your brief. You talked about how adversarial and confrontational the system is. Do you think that subsection 1(4a) of the bill, which will amend section 20 of the Children's Law Reform Act where it says, "Where the parents of a child live separate and apart and the child is in the custody of one of them and the other is entitled to access under the terms of the separation agreement or order, each shall, in the best interests of the child, encourage and support the child's continuing parent-child relationship with the other" is going to help reduce some of the adversarial system? Second, what are other ways in which you would like to see the legislation strengthened to reduce the adversarial component?

Mr. Armstrong: There is no question that the section you have just mentioned, which is effectively the preamble to the legislation, is indicative of the environment and, if you like, the thrust of the law, where it is headed and why it is here.

What does concern me is that we are still dealing with an adversarial

process and the sooner we can get back into something where proprietorship and ownership of children is not the issue but rather the welfare of the children is the issue, the sooner I think we are going to be making some headway.

With the idea of desensitizing or even removal from court bodies, I can foresee the day when these will not be matters for courts, there will be different types of bodies involved in this process, because when two parents get separated or divorced, the fault notion is the one thing that you want to somehow get away from when it comes to the children. That has to be looked at immediately as the one salvage value of whatever that relationship was that is worthy of every conceivable protection there is.

I will never forget in my own experience going before the attorney and seeing that first document, that first draft of a separation agreement. That is a shock, because you have been in some other kind of a relationship, albeit deteriorated and what have you. It is still a tremendous shock to see that; but yes, it is there. I just want to see more of it, I guess.

Mr. Chairman: Thank you very much, Mr. Armstrong. I appreciate your taking the effort to write the brief and appear before us.

I would like to call upon Hilary Girt, representing the Canadian Council for Co-parenting. Welcome to the committee.

#### CANADIAN COUNCIL FOR CO-PARENTING

Ms. Girt: I am Hilary Girt and I am co-president of the Canadian Council for Co-parenting, and this is Bruce Rosove, who is a member of our executive committee.

Mr. Chairman: You have one half-hour. You may divide the time as you see fit between presentation and questions from the committee.

Ms. Girt: I will start off. I should first tell you that the Canadian Council for Co-parenting is actually an Ottawa-based group and we are part of the Canadian Council for Family Rights, which is an umbrella organization of groups such as our own.

I have prepared several handouts explaining the aims and objectives of our group in more detail, but all I really want to say at this point is that we are all from families affected by divorce—grandparents, children and parents—and with various forms of custody, some with joint custody, some custodial and some noncustodial. The basic belief that joins us together is that we feel that children of divorce need the active involvement of both their parents, and that is why we very much promote—

Mr. Rosove: I think they are looking for our submission. I do not think they have it.

Ms. Girt: Are you looking for something?

Mr. R. F. Johnston: I do not know what I have done with your document.

Mr. Chairman: It has not been circulated. It was just handed in.

Ms. Girt: We have not done a written submission.



Ms. Poole: I have one here from the Canadian Council for Family Rights.

Mr. Rosove: That is a different group.

Ms. Girt: We are part of the Canadian Council for Family Rights.

Ms. Poole: But this is not your presentation.

Ms. Girt: No. You have to listen to our presentation. We have not written it out.

Mr. Chairman: That is sometimes a good strategy. Members will have to listen.

Ms. Girt: We did not really want you reading too much instead of listening. Have we got everyone's attention?

Mr. Chairman: Yes.

Ms. Girt: Okay. We believe basically that children of divorce need the active involvement of both parents, and so we really promote concepts of various forms of co-parenting, shared parenting and joint custody, and through education and pressure and a push for legislative reform.

We also believe that the adversarial system in the courts often makes bad situations worse and exacerbates the situation and the children end up suffering, and it is very expensive—I am sure you have heard this 100 times already—so the other thing we are very strongly in favour of is the use of mediation.

However, the third pillar that we have is access. It is another of our serious concerns. We feel this is something that happens when other routes have failed, so that is why we are here today.

It is certainly true that very many of our noncustodial members have experienced a great problem with getting access to their children and they have experienced a great deal of pain, and we speak for them as well. In many cases, the custodial parent has discouraged contact with the noncustodial parent, has been very resentful, has discouraged it and in many cases even denied it.

I want to make a major point that this is not an issue that is men versus women. Although most custodial parents today still are mothers and still have mostly sole custody, it is still true that 12 to 14 per cent of men have had custody, and this is a figure that has been fairly consistent over the past 20 years. So this is also a problem for women who do not have custody of their children. In fact, there is much more social pressure against noncustodial women, mothers; although we talk about "unfit mothers," I have never heard anyone talk about an unfit father.

I am going to talk about three stories from three of our members. They have allowed their names to be used and they would like their story to be heard. The first is Diana Fowler. She was one of the founding members of our group in 1985. She has been separated now for nine years, and at the time of separation her son was only three. At that time, she was not very well educated; she knew she could not earn very much money and felt it was in her son's best interests for him to remain with the father. At first she was able

to see him regularly. Although she found this very painful, she was able to see him.

However, time went by and her ex-husband became involved with another woman who decided she wanted to be mother of this child and wanted to cut out Diana. This made access very difficult. Then they all moved around a lot. The husband moved several times and left no forwarding address. Diana also moved and was unable to see her child.

When she helped found the Canadian Council for Co-parenting, she had not seen her child for two or three years. She did not see him at all for a total of seven years; he is now 11. Last October, she was able to track him down. She felt that her ex-husband, as she put it, had grown up and she was able to see her son. She flew out to Calgary to visit him. Now she has re-established contact with him and is able to talk to him every week and hopes to see him this summer. Her story has had a sort of happy ending, but meanwhile her child's whole childhood has gone by.

That was one of our members' stories. She feels that mediation perhaps would have helped her, but she also points out that they are now living in Calgary and we do have the problem of access. I did not tell the stories of a lot of our members, because I felt you would be helpless to do anything about it. A lot of our stories are of people who have custody and the mother or father has moved to Calgary or Winnipeg, where it is very difficult and expensive to see them. They move and they do not see the children.

The next story is Lilianne George. She is a grandmother; the grandfather as well is involved. They have two granddaughters who were five and three at the time of separation in June 1985. The mother has a history of schizophrenia. When the separation first took place, the grandparents had interim custody, which they had for a year and a half, from June 1985 until January 1987. At that point, there was a family court assessment which recommended that custody be awarded to the grandparents because of the mother's mental state.

However, the judge disagreed. He said, "Children belong to their mothers" and awarded custody to the mother. Sometimes the mother is well and sometimes she is not. When she is well, she tends to want to go out quite a lot and she is very happy to bring the grandchildren over to their grandparents to be baby-sat and looked after. When she is not well, she retreats into herself and there are definite signs of abuse. She gets violent and the children are extremely unhappy, and then she denies access. Of course, the grandparents have no power at all. They feel that there should be some way of trying to get sides together and that mediation in some form might help them.

The third story is Paul McManus. He has been separated for only a year and a half. His son was three at the time of separation and, as Paul puts it, his son had access problems to the father. On separation, there was an ex parte order made out against Paul. Allegations of violence were made. He had no chance to refute them. There was never any evidence and eventually they were dropped. But for several months he was under supervised access at the home of his parents, and this was entirely at the whim of the ex, who felt that half a day a month was enough time for a two- or three-year-old to remember his father. However, that story does have a happy outcome, because the two of them went through mediation and as a result have established joint custody, and that seems to be working well.

Those are three stories. I would like to finish on a more positive note, because with the joint custody and the mediation we feel there is a chance that this child's life will not be disrupted and that he will have a chance to develop a relationship with both parents.

That is all I would like to say. I would like to turn it over to Bruce Rosove, who has some more specific comments on the bill.

Mr. Rosove: I am Bruce Rosove. I am a father. I am a separated father, soon to be divorced. My marriage broke up in September 1986. We had a very difficult time deciding what would happen with the children. In fact, my wife wanted to have sole custody and I wanted to have joint custody. I did not want to be a weekend father.

We went through an eight-month assessment with the family court clinic and had, previous to that process, agreed to be bound by its recommendations. To my pleasure, they recommended that we should have a joint custodial arrangement. They also recommended a staged schedule in which Susan has the kids a bit more than I do now, but as they get older the time with them will equal out. I am not sure why they did that, but they did.

They also recommended that we seek family therapy. We continue to be in family therapy. The four of us go together once a week. Through that mechanism, we are able to communicate about issues around the kids, and the kids are doing very well. We have two boys. Their schoolwork is improving, their levels of anxiety have decreased, their whole general situation has improved dramatically over the time since we broke up. I attribute that to the fact that there is a joint custodial arrangement and that, although it is difficult in many ways, we have managed to find ways to, in effect, co-parent in spite of the fact that, frankly, my wife has said she does not believe in co-parenting, at least with me. It works for us because we try and we make it work and we do it for the kids.

So I am very much in favour of the concept of co-parenting where there is any chance at all that there will be co-operation. In our case, there was not—I repeat, there was not—agreement to it on one side, but it is working and it is working because it is either help it to work or have a much worse situation if one person tried to actually actively sabotage it.

I think in our case at least joint custody, even in a situation where one of the parents was not that happy about it, has done a lot of good. I am told by lawyers in Ottawa that it is fairly unusual for that kind of thing to have been recommended. I am not sure exactly about all the factors, but it was a very difficult eight months, I will tell you, for both my wife and me. We were both very frightened.

I mention that because I want you to understand that there are other models besides the adversarial. We managed to avoid going to court. We did not ever go into mediation in a formal way because, again, Susan was not comfortable with that. I listened to the tail end of the speaker before us and noticed that he made quite an impassioned plea to de-escalate the adversarial nature of this whole area of our social lives. I would suggest to you that it is not possible to de-escalate it in a legal context.

1430

One of the three planks that we are very interested in seeing pushed and developed is mediation. I say to you that mediation is the right way. There



are a lot of models. A lot of study needs to be done. There are some very good mediators now; there need to be more. I encourage the Ontario Legislature to support more research into that area and a much more open attitude to the idea of mediation as a solution or a partial solution to making decisions about families that are breaking up.

The pain that Sue and I experienced was excruciating and it was absolutely clearly made worse by the system—the lack of trust; the lack of communication; the fear, on my side, that I was going to be without my kids and paying for the rest of my life and, on her side, that she was going to be without the kids and with no money. It was really horrendous. I am convinced that some forms of mediation could be much more effective.

I want to get to Bill 124, but I want to say one other thing. A friend of mine who has been in an extremely bad marriage for a long time called me just this week and told me that it looks like they are actually going to break up now. It just brought back all the terror that I went through when I started the process of removing myself. I am having trouble talking about what happened, but you know what happened.

I am very frightened for him. I hope he can find a way to get mediation. They are trying to go that route, but it is not encouraged by the way the system is set up now. There is no time to get into the kinds of structural changes that need to happen to encourage mediation. I just want to flag that in as major a way as I can.

To talk about Bill 124, I guess the first thing I would like to say is that in the context of the present legislation, for the people who are in separated families now, there is very little that a noncustodial parent can do to—I hate the word "enforce," but to take advantage of the access rights that he or she has been offered through the courts or through an agreement or through whatever process was used.

In that this bill tries to address that, we would like to endorse the fact that the Ontario Legislature is working towards some remedial efforts to provide some ways that noncustodial parents can seek help when they are having difficulty getting access.

Some things that we find quite important are the clauses in the bill which allow the noncustodial parent access, where he or she has been awarded generous or reasonable or all of these words which are totally undefined, and the custodial parent uses the lack of definition of the access as a way of thwarting access by saying, "Oh, well, we're busy that weekend."

I have a friend who has to drive to Welland, Ontario, to see his daughter. He can never get through on the phone. When he does, he makes an arrangement and has to pay for a hotel. He does not earn a lot of money. He gets there and is told, "Oh, well, something came up." Corrie has to go to a birthday party or swimming or something, and the guy has absolutely nothing he can do. He is so discouraged by his lack of ability to get any kind of definition to the situation. He has not given up, but it is not easy for him.

There are clauses in the bill—I am sorry I do not have the references, but I am sure you can find them—which allow the noncustodial parent to apply to the court to have definition of specific access schedules set up without reopening the whole agreement. I would endorse that very much. I think it is a very important point.

Another point that is important—unfortunately, on the negative side—is that the bill only allows actions to take place within 30 days of the occurrence of a denial of access. That is a really major problem, because although this is relatively inexpensive, in the absolute world of people who have a split-up family and have ordinary incomes this is an expensive redress. You have to hire a lawyer; you have to take some time off work; you may have to find witnesses and so on. So people are not going to be rushing into courts to take advantage of this bill.

The problem you are going to face is that if you have to do it within 30 days, you are going to have three or four or more occurrences before somebody finally says: "I've got to go. I can't stand this. I'm going to spend the \$2,000 or \$3,000 it is going to cost me in legal fees. I'm scared to death." Then they are faced with only being able to get action on the most recent situation. That is a really negative aspect of the bill.

I am not completely clear why that time limit was put there. I think it should be taken out. If it cannot be taken out, the bill should absolutely be written in such a way that a pattern of denial can still be entered as evidence so that at least the court will understand that this is not an isolated case and maybe will take some action that will give the noncustodial parent some redress.

I heard some discussion by the speaker before which sounded like a discussion about the idea of penalty. I am not in favour of penalties. I think that escalates everything. I would like to see compensatory time, however, and I think the time compensated for should be roughly equal to the time denied in the past.

There is one exception to that: If a custodial parent purposely disappears from the noncustodial parent, I think penalty should be considered in those circumstances. You need a deterrent so that a custodial parent who does try to hide from the noncustodial parent for reasons of access should realize there is a deterrent. If there is fear of some kind of abuse on the part of the custodial parent, then a third party could be used to make it possible for the noncustodial parent to continue communicating with the parent. There should be a mechanism through which the noncustodial parent can have contact with the children of his or her family.

Again, as the previous speaker mentioned and, I gather, spent some time on, there are eight different so-called justifications for denial of access. I would like to quickly go through those and give you our feelings on them. The first is, "the responding party believed on reasonable grounds that the child might suffer physical or emotional harm...." Clearly, if there is a risk of physical or emotional harm, caution has to be used. However, one of the general problems with all of these eight criteria is that they tend to put the onus of proof on the victim of the denial of access. In other words, the noncustodial parent has to prove there was not a reasonable reason why he or she did not get access. That seems to me to be backwards.

We are talking about a person going into court trying to get redress for a wrong, and he or she then has to prove that there was not a justification for the wrong. It seems to me that if the custodial parent denies access, the minimum that person should have to do is prove there was a justification for the denial of access.

In the case of the fear of physical or emotional harm, there are ways that can be documented and the language of the bill should indicate that the onus of proof is on the custodial parent.

The second case is, "The responding party believed on reasonable grounds that he or she might suffer physical harm." That one is even clearer, because it is quite feasible to have third-party intermediaries used to have the children: the school, a day care centre, a baby-sitter, agencies that specialize in both supervised access and neutral dropoff points. There is no need to deny access because the ex-spouse fears harm. You simply institute a program which allows there to be no contact between the two parents.

I know I am running short of time, so I am going to move quickly. The third point is, "The responding party believed on reasonable grounds that the moving party was impaired by alcohol or a drug at the time of access." I would suggest in this case that the proof that should be required is a breathalyser or similar test; that the police be called and asked to have the noncustodial parent use a breathalyser. Then there would be clearly documented evidence and you would not be in a court having to deal with basically hearsay evidence.

The fourth point is, "The moving party failed to present himself or herself to exercise the right of access within one hour of the time specified." Well, really, if you are an hour late for work, you do not get fired.

Mr. Reville: It depends on who your boss is.

Mr. Rosove: That is true. You are right. I think my point is made and I would suggest that one be deleted completely.

The fifth point is, "The responding party believed on reasonable grounds that the child was suffering from an illness." There are an awful lot of illnesses that do not preclude moving a child from one house to another. I would suggest in this case that a doctor's certificate, hospital records or some documentary evidence should be necessary before access is denied on the basis of illness. I would go further, to say that if a child is ill and he or she cannot be moved, provision should be made so that the noncustodial parent can visit the child in his or her sickbed, because at a time like that the child has an even greater need for contact with both parents.

The sixth point is, "The moving party did not satisfy written conditions concerning access." I am suggesting a twofold test in this case: first, the condition that is alleged not to have been satisfied must prejudice the safety of the children and, second, the onus of proof of the alleged failure to meet the condition must be on the responding party and must be based on objective, independent and irrefutable evidence.

The last case where the bill suggests the court should look the other way is when, "On numerous occasions during the preceding year, the moving party had, without reasonable notice and excuse, failed to exercise the right." What I would suggest here is that this is a clause that would allow back-door, permanent denial of access. I would suggest that it be deleted from this bill and that if a parent wishes to institute permanent denial of access, that should be done through a re-examination of the total separation agreement or divorce. It is just too major an issue to have it as part of a bill that is not designed to deny access permanently at all.

The final case is, "The moving party had informed the responding party



that he or she would not seek to exercise the right to access on the occasion in question." I am just going to let that one go. You can read my comments on that last one.

I would like to end with a quote that was made by Karen Decrow, who was the president of the National Organization for Women in the United States in 1987. What she said was, "Until women and men share the parenting function, there is no possibility that they will be able to share political, economic and social functions."

I would suggest to you, ladies and gentlemen, and I would plead with you, that whatever you decide around Bill 124 around the issue of mediation and around the issue of a more liberal interpretation of joint-custody issues, you consider that we need in our society to promote more equality between men and women in every area.

Considerable progress has been made in giving women more access to the labour market. In a sense, we need to do the same for men in the nurturing side of our lives. Men traditionally in our society are not as good nurturers as women. That is changing. Some of us are working hard to change ourselves and to encourage other people to change.

The whole issue of parenting, the denial of the right to parent and the denial of the child's right to parenting by both parents, does affect our society's ability to share nurturing and caring equally between the sexes, and whatever we can do to improve that will improve society as a whole. Thanks very much.

Mr. Chairman: Thank you for your presentation. You have used up your total half-hour of time. Thank you for coming before the committee and sharing with us your thoughts on this bill.

Mr. R. F. Johnston: On a point of order, Mr. Chairman: I know we talked in the steering committee meeting about individual presentations and warning deputants who come before us that they have no protection in terms of legal actions that may be taken against them about things they may say here. I had not expected to come up with a group, but in that case, obviously even the group should be told that if they are having legal problems at the moment with a spouse or an ex-spouse or whatever and they make allegations about that person here or make value judgements about situations which have occurred, it is quite possible that that could be used against them in a court of law.

This is televised, Hansard would be available to those people, and therefore I think we need to caution every group that comes before us from this point on about that so that they know the risk they are taking when they come before us. We have some protection for what we say, but guests do not.

Mr. Chairman: Thank you very much. I was considering interrupting the presentation and it will become part of my advice to each presenter.

I would like to call upon Joan Brooks, president and spokesperson for Grandparents Requesting Access and Dignity, GRAND. Welcome to the committee. You have one half-hour to divide as you see fit between presentation and questions from the committee.

I would advise you to use caution in referring to any personal situations, because we are live on television and in a public forum. If there is anything that may appear in a legal court or a hearing, you should refrain from discussing that matter.

Thank you for coming. You may proceed with your presentation.

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GRAND SOCIETY

Mrs. Brooks: Thank you for having us. I am president and spokesperson for the GRAND Society. GRAND stands for Grandparents Requesting Access and Dignity. The GRAND Society was founded in 1983 by three social workers: Rilla Clark, Marilyn Lay and Resa Eisen. Three years ago it became too time-consuming for the founders on their private time. They, in turn, turned it over to the grandparents.

We have found that in our cases we are dealing with 40 per cent divorce, 40 per cent family breakdown with the marriage intact with denial of access to grandchildren and 20 per cent because of death and other reasons. We strongly believe in mediation, always, before the courts, but the catch--22 here is that both sides must agree to mediate or there is no mediation.

I would like to mention that grandparents who come to us are innocent until proved otherwise. On that same note, I will say that not all grandparents benefit their grandchildren, but for those of us who do or who would like to do so, we should not be denied because of someone's whim. I have seen access denied because of a speech impediment or because of a grandparent's suffering from seizures.

Children are being used as weapons today. "Do what I want, or you won't see your grandchildren." At this time I would like to say that as of two days ago, my husband and I have interim custody of our two grandsons, two and six years of age, with no access to the parents. It saddens me to say this, but I thank God that we are here to do it. We also need help from our families and the community to do it.

I would like to give you some statistics, if I may. By the late 1990s, single-parent homes will be in the 70 per cent range. This will be the norm. Child abuse is at an all-time high. This is John Sweeney's own quote:

"I say behind every abused child stands grandparents...in most cases would step forward if called upon to raise their grandchildren, providing their health is up to it. The child will be with his or her extended families, will be much happier and there would be a great saving of the taxpayers' dollars. With 5,000 children crown wards, I think it is worth taking a closer look at the possibilities."

As one judge in Brampton said in giving custody of a three-and-a-half-year-old grandson to his grandparents, "Grandparents are the backbone of this country."

We have American grandparents looking to us for ideas, and we to them, as divorce and child abuse are also at all-time highs over there. We are working together in our novice way trying to help each other. For us, there is no border. We have grandparents from Ottawa who have spent, so far, \$35,000 in legal fees to have access to their grandchildren, and still there is no access. These children are still being abused.

I have given you a copy of article 659 from Quebec, written into the legal code since 1981. The onus is on the parent to prove the grandparent unfit. We have Don Cousens, Progressive Conservative MPP from Markham, with

his Bill 49, which has had first reading. Hopefully, it could be amended to Bill 124.

Each case must be dealt with. We cannot be grouped together, as each one is different. I feel mediation would put everything on the table. Things could be dealt with openly and fairly.

Many of the calls I receive are truly sad. In one case, a grandmother went to the school and threw her grandson's present over the fence, as she was not allowed to speak to him.

I will finish my presentation today by saying we have no letters after our name, only those of G-R-A-N-D. Hopefully, you will give thought and consideration to what I have said here today. Thank you very much.

If there any questions, hopefully I can answer them. I will try.

Mr. Chairman: Questions from members of the committee? Seeing no hands, I will ask you, how many members do you have in your organization?

Mrs. Brooks: Approximately 55.

Mr. Chairman: Are they generally from the Ottawa area, or across Ontario?

Mrs. Brooks: They are from all over. They are from Aylmer, Bradford, Ottawa, Toronto, Hamilton, Burlington. There is never a day that goes by that I do not receive a call from a grandparent.

Mr. R. F. Johnston: I am just wondering if we might get a comment from the parliamentary assistant or staff in terms of what Bill 124 does or does not do as far as you are concerned around grandparents and, if you think it does not address the concerns that are raised, why that has been the case. I tried to raise that during the speeches and I never really did hear a response on the grandparent issue in Hansard. I was just wondering if we could get that officially today.

Mr. Chairman: Mrs. Brooks, is it okay to use some of your time to hear this response?

Mrs. Brooks: Yes.

Mr. Offer: Basically, from listening to your particular submission, which I appreciate very much, I was concerned about whether your major emphasis was on whether grandparents themselves have a right to access as opposed to this particular bill, which seeks to provide an expeditious way in which such an access order may be enforced.

Under the act, I think, and Mr. Cochrane will, I am sure, agree, as well as legal research, any person may apply for custody or access. "Any person" of course would connote mother, father, grandparent, aunt, uncle. There is no limitation. So the foundation upon which you have a right to access has been established. This bill seeks to provide a remedy in which you would be able to enforce that access order which has previously been given.

Mrs. Brooks: No. I feel grandparents should be recognized as special people, because we are very special to our grandchildren. I know anyone can make an application through the courts but, again, I state that we are not just anyone. I feel we are special people and should be recognized as such.



Mr. Offer: I understand what you are saying. I just hope that—

Mrs. Brooks: If I am right in saying that, I do not know. I do not want to—

Mr. Offer: Through you, Mr. Chairman, to Mr. Johnston, under the act any person has the right to apply for access at any time.

Mr. R. F. Johnston: Yes, any person has the right to apply for access under the existing act, but I guess what I was concerned about is what this act does not do. It only indicates that problems are going to be between two parents and does not really seem to indicate at all any hierarchy of rights here, if I can put it that way. That seems to me what grandparents are asking for, some kind of special recognition both in the existing act and in the process for trying to get some redress under Bill 124. I did not mean to put words in your mouth, but I think it is both areas you are after.

Mr. Cochrane: The only thing I think I could add is that the way the hierarchy works now is that section 21 of the Children's Law Reform Act says any person may apply to get, we will say, an access order. That has been interpreted by the courts to mean that "any person" includes a grandparent.

Mrs. Brooks and I have actually discussed this before, that there are cases of grandparents, like the ones she has mentioned in Ottawa and herself, who have applied under the Children's Law Reform Act and have got orders giving them access to their children or in some cases—I think she probably falls into a very unusual category of actually getting custody itself.

In terms of the bill, the bill says that anybody who has an access order will have it enforced in a better way. The only provision in Bill 124 that speaks just in terms of parents is section 1 of the bill that would add subsection (4a) to section 20; it talks about the duty to co-operate between parents. That is the only new section that talks just about parents. The balance of the bill applies to anyone who has an access order.

If grandparents held an access order as a result of an application they instituted under section 21, they would then be able to use Bill 124 to enforce it, but Bill 124 does not propose to change the way in which grandparents might obtain the order in the first place.

Mr. Daigeler: If I interpret you right, I think you are basically in support of this bill but you would like to see somewhere, hopefully in an important place, the word "grandparents" mentioned. Would that be the main substance of your concern?

Mrs. Brooks: Yes, very much so.

1500

Mr. Jackson: I would like to treat this as a supplementary to Mr. Johnston's question—perhaps asking the question another way—with respect to the hierarchy and the placement of grandparent rights as opposed to treating them in the fashion in which they have been treated in this bill.

My question would be to the parliamentary assistant or, through him, to staff: What consideration was given to the Quebec model at the national forum in which these matters were being discussed, and/or is it your interpretation that the Quebec model comes closer—I will use Mr. Johnston's reference—to

what implies a hierarchy or a primacy for certain relationships, in this instance grandparents?

The reason I am concerned about this is because clearly there is a distinction in this bill, which deals with marital breakdown, that is, in a sense, unique and different from the case where there is a death. There is less then of the complicating factors regarding a long, arduous and bitter difficulty where grandparents perhaps sometimes take sides. There is no process of taking sides in the event of the death of one of their children in that relationship.

I see that perhaps the Quebec legislation was coming close to dealing with that small 10 per cent or 20 per cent statistic which you made reference to, and I wondered to what extent the Attorney General's office was vigilant in pursuing that point.

Mr. Cochrane: Quebec is represented on the federal-provincial committee and did have its clause before the committee. One of the things you have to understand about the way the Quebec principle works is that if you step back for a moment—I do not mean to prejudge the right of any grandparent to make an application, because I think Mrs. Brooks is absolutely right. In many cases, the grandparents certainly do have a powerful role to play in the lives of their grandchildren. If you take that provision and then bring it into Ontario law, what you see is a presumption that grandparents have particular rights which we have not even given to noncustodial parents in Ontario.

In other words, one of the arguments and one of the discussions I think the committee will probably get into is whether or not we should have a presumption of joint custody. The Quebec provision really is a presumption of grandparent access. To isolate one group as having a particular entitlement that must be disproved by other parties before the court would create a hierarchy where we would have one set of applicants with one evidentiary standard and other applicants, for example, aunts and uncles and brothers and sisters, who have another standard to meet.

On the basis of the work we have done, the Quebec provision did not fit very neatly into the existing scheme in Ontario, because it would have left grandparents with an evidentiary standard unlike any other applicant to the court.

Mr. Jackson: If I can just pursue that with one further inquiry then—

Mr. Chairman: Before you carry on, I want to make sure that Mrs. Brooks realizes that her time is being used.

Mrs. Brooks: No, I am fine.

Mr. Chairman: You have no problem with this?

Mrs. Brooks: No, that is fine.

Mr. Jackson: If I am listening carefully, I am hearing that the concept did not fit well within the context in which the basic thrust of this bill in Ontario was being structured. Was there an examination of the impact of that kind of legislation in Quebec? What practical complications have emerged in the Quebec judicial system as a result of the very point you have

made and to what extent is the Attorney General's office aware of that point? I understand it may not fit with the main thrust of your bill.

I had a two-part question: Were you able to assess what impact that has had with respect to the priority it places over aunts and uncles and so on and so forth, or the complications it has created, or has it been a resolution mechanism, which we all hope it will be?

Mr. Cochrane: The answer to that really comes in two parts. The first part is that the Quebec provision, which creates a presumption in favour of grandparents—I do not mean to suggest is out of tune with this bill, but it is out of tune with the Children's Law Reform Act generally, which sets evidentiary standards. So it is not so much a concern in relation to a particular bill.

In the second part, the Quebec delegates to the federal-provincial committee did not have any suggestion that it was not working in Quebec or that it had somehow set their family law interpretation out of balance. That really was not a factor, and it really has more to do with creating in Ontario a hierarchy that does not exist already. Going back to what Ms. Poole was pointing out this morning, we have legislation that has tried to walk a very fine path down the middle between all applicants to the court and not giving preferential treatment to any particular one.

Mr. Daigeler: I have one question. In your group, do you have any experience or statistics of how any access requests by grandparents to the court have been working?

Mrs. Brooks: We have one case where she does have legal access through the courts but she is not getting it at this point in time, which means she will have to go back to her lawyer and whatever is done to enforce the access to her grandchild.

Mr. Daigeler: But in terms of the courts themselves, have you experienced any particular difficulties that would be special to grandparents rather than to any other kind of person, that any other kind of person might not have with regard to the courts?

Mrs. Brooks: I am not too sure of the question.

Mr. Daigeler: Well, I think the argument that is being made is that grandparents have the right to go to the court like any other person and so why should we mention grandparents specifically if they are in the same situation as anyone else.

Mrs. Brooks: Before a grandparent even thinks about going into court, there is much soul searching; there is much stress. It is not a flip thing that we go into a court, say we are going to go in tomorrow or next week for access to our grandchildren. There is much soul searching, because what rights does a grandparent have? Not very many. All has been lost, and again I say there is much soul searching and stress before a grandparent will go into court. We do not have statistics on the court, but again I say we are not flip.

Ms. Poole: Just to follow Mr. Daigeler's line of questioning, do you have access to any statistics which show how many grandparents have actually gone to court to get access and what their success rate is? Do you have any idea?

Mrs. Brooks: No, nothing. We just have a paper from 1985 stating the



fact that grandparents are raising their grandchildren again, more and more. Grandparents are—it is a cliché they do not like to be used—coming out of the closet more now, so to speak, in this denial of access. At one time they would pretend. We have a grandmother in our group who is a member, but when she is asked about her grandchildren, she says they are living abroad. It is an extremely sensitive issue. You have raised your family and you do not wear it like a feather in your cap that you have been denied access to your grandchildren. We are dealing with a very sensitive issue here.

Mrs. Cunningham: Could I ask a question? Is there any place in Bill 124 where you feel you are being recognized, given the response to Mr. Jackson's question?

Mrs. Brooks: Not really. Again, I say I am a novice. I read Bill 124 through and I really do not see anything there, unless I missed it.

Mrs. Cunningham: I think I might have as well. I am sorry, I was trying to listen. Could I have a clarification as to what clause grandparents would be included in if they were to go the courts, the specific clause?

Mr. Offer: Do you mean in the bill or in the act?

Mrs. Cunningham: I mean in the bill. It is not in the act, is it?

Mr. Offer: Basically, not dealing with the bill, but section 21 of the Children's Law Reform Act states: "A parent of a child or any other person may apply to a court for an order respecting custody of or access to the child or determining any aspect of the incidents of custody of the child." That is not in Bill 124; that is now in the Children's Law Reform Act.

Bill 124 is designed to provide a process by which those access orders may be enforced, so if you are looking for something specific in terms of the bill, there is not, because the specificity you are asking for is found already in the Children's Law Reform Act under section 21.

I think what the submission is about is that the specificity states "any other person" as opposed to indicating a grandparent, if I am correctly indicating the thrust of the submission.

1510

Mrs. Cunningham: Could I ask for your direction then, Mr. Offer. If in fact we are going to be hearing from persons representing grandparents throughout these hearings and they do not feel that "any other person" is specific enough now with regard to section 21 of the Children's Law Reform Act, if we are trying to improve upon the Children's Law Reform Act because they do not feel it is specific enough, what would you suggest they do? Where should they go?

Mr. Offer: I think, first, what we are dealing with is not section 21 of the Children's Law Reform Act but a particular set of amendments found within Bill 124. In terms of "any other person," I think even through the deputation we have heard that on the one hand there is not the specificity, yet on the other hand we have heard that the courts recognize the right of grandparents on an equal level, as well as sisters and brothers and aunts and uncles, to apply for custody and access.

If you are asking anything further, I would ask, with respect, that you

be a little bit more specific or we could deal with it in the clause-by-clause analysis, but in terms of section 21 of the Children's Law Reform Act, it is our position at this point in time that it does provide the specificity, especially through court interpretation, of the right of a grandparent to either access or custody.

Mr. Jackson: Mr. Chairman, on that point, if I may—

Mr. Chairman: I just want to point out for the information of the committee that Susan Swift, our researcher, has circulated on your desks today a research paper on this very subject covering a lot of the information.

Mrs. Cunningham: That is right, and that is why I am confused. If we are looking at amendments to the Children's Law Reform Act that are important to the people we represent and we have only chosen certain clauses to amend—change or add to—at this point in time, does it not make good sense, given the amount of time it takes to change legislation in this province, to deal, if at all possible, with other aspects of the Children's Law Reform Act, which quite frankly could include section 21 or any other section that has to do with any custody and access, which this does have to do with?

We are just looking for some direction, because quite frankly we are going to have a lot of people speaking to us around Bill 45, which is just that, and around Bill 95. If we are in the wrong arena right now, I think we should be telling the public which arena to go to. One has to do with supervised access and mediation, which everyone has spoken to so far, and the other one has to do with the rights of grandparents and joint custody, which everyone has spoken to so far as being important, and we are only a few hours into these hearings.

Given the length of time it takes to change legislation, just because someone has decided that in Bill 124 certain clauses ought to be changed, where do they go and at what time in the history of this government will they have the opportunity to make changes that have to do with children's lives and custody and access? This is definitely related.

Mr. Chairman, just in case you are concerned, this is not a political speech. This is a speech on behalf of everybody, all parties. We have a wonderful opportunity to change something now.

Just because section 21 is not in here, I do not buy it. I think that is the very reason we are sitting on this committee, to get input from the public, and again, I get some defensiveness from Mr. Offer.

I want changes to that Children's Law Reform Act that have to do with children and their parents and access and custody, and I am not waiting two more years. I am not here that long. I may even be here too short a time if this keeps up. There has to be a process within government to make changes.

Mr. Chairman: I was trying to signal you that another member of the committee, your colleague Mr. Jackson, wanted to get a question in before the time is up.

Mrs. Cunningham: But if you can answer mine first, then he will be happy to ask his, I am sure.

Mr. Jackson: I have specifics of the bill I would like to address in order to raise that question. Quite frankly, I understand clearly the

government's proposed treatment of grandparents by reference to "any other persons." Then again, it sets out in section 24 a certain standard, what is in the best interests of the child. Clearly, we can see in subclause 24(2)(a)(iii) that includes—we must assume that includes—grandparents, "persons involved in the child's care and upbringing." We might even go so far as to say "who have been previously involved," meaning the grandparents had access to the children. Then we look at clause (h). When we look at "the relationship, by blood," clearly that implies grandparents.

However, the amendment that is proposed in Bill 124 discusses a new clause 24(2)(d) that talks about "the ability of each person seeking custody or access to act as a parent." Now, we go from the general reference to—

Mr. Chairman: Mr. Jackson, that is all well and good—

Mr. Jackson: No, it is not all well and good. I am asking a question.

Mr. Chairman: Well, you are out of order.

Mr. Jackson: I am almost completing my question.

Mr. Chairman: Mr. Jackson, would you allow me? I am the chair. It is all well and good, and your comments, I am sure, will be of interest to the committee later, but the time for this delegation has expired and I must move on to the next delegation.

Thank you very much for coming before us today and taking the time to research your views and share them with the committee.

Mrs. Brooks: Thank you all sincerely for having us.

Mr. Reville: Mr. Chairman, on a point of order: Would it not be conciliatory of you to indicate to the members of the committee that when we get to the clause-by-clause portion of this exercise, they are entitled to move any amendments they wish? They may be in order, they may be out of order, they may be supported, they may not be supported, but in fact they can move amendments to section 21 if they feel like it, and the committee will take them unto itself, always having regard to the wise rulings of the chair.

Mr. Chairman: I had that in mind. I recognize that the four days we have set aside are for delegations. We will be dealing with this bill clause by clause when we get back to the regular session of the Legislature. It may very well include our having an opportunity to ask more questions of the ministry. I do not think we should try to fit in too many of those kinds of questions. I am doing it at the pleasure of the delegations, because that is who we are here to hear from.

I would like to move on. Thank you for the point you made, Mr. Reville.

Mr. Reville: Just trying to be conciliatory.

Mr. Chairman: Ross Virgin. You have several members of your delegation. Would you introduce your delegation? Before you do that, however, I remind you that you have one half-hour to divide between presentation and questions as you see fit. I would caution you, as I have cautioned other delegations, from referring to specific cases that may be before the courts or have a chance of appearing before the courts. We are in a public forum.

Mr. Virgin: I appreciate your caution, very much so. For that



reason, I prefer not to identify some members of our delegation. We are going to be bringing to you some grass-roots material from people who, again, are not going to be identified for exactly that reason. I am very conscious of that.

Mr. Chairman: I point out, however, that we are on public television.

Mr. Virgin: Correct. I do understand that.

#### IN SEARCH OF JUSTICE

Mr. Virgin: I am Ross Virgin with the organization called In Search of Justice. I was so impressed with Mrs. Cunningham's last question or series of questions that I cannot help but open my comments by referring back to them. I really liked where she was coming from. I believe that probably most of the material in our submission will be very much in line with her questions, concerns and perhaps the broader aspect of some of the issues that have already been brought to this committee today.

1520

I am really pleased to be in the position of coming in a little later in the schedule, because I have heard some of the previous groups making reference to the same issues and also reflecting some of Mrs. Cunningham's concerns. Those are some preliminary comments.

As I said, the organization is In Search of Justice. Our membership is approximately 2,100 members across Canada. A very significant portion of that membership is made up of noncustodial parents.

I realize that we have been looking extensively for some statistical basis here. I am not going to suggest at all that I have conducted in any way extensive surveys. I have not, nor has our organization. I am the first person to admit that our statistics are poisoned, because needless to say, people only call us when they have a problem.

However, approximately 80 per cent of our members have access problems. In light of that, I want to add some emphasis and credibility to the comments by Mr. Cochrane and Mr. Offer earlier today, that while some people may dispute that access violations are a problem, I wish to be here to reaffirm that intensely.

While I am carrying on here, just so that each committee member and possibly members of the press have some means of further identifying who we are, I am going to ask my colleague to go around the room and leave a business card with all of you identifying exactly who we are and how we can be reached if you so desire in the future.

Because we are basically a grass-roots organization, something like the submissions and the groups that have been here already today, I would like to suggest that we are actually working in the trenches. I was glad to be present this morning when the Ministry of the Attorney General made the outline of what Bill 124 was all about. I really found Mr. Offer's and Mr. Cochrane's comments very informative.

I suspect that we, the guests coming to make submissions and presentations to you, can give a different perspective. I know Mrs. Cunningham has personal experience and I know Peter Adams has had some of his

constituents bring their personal access violation problems to him individually. Maybe where my organization and others like us have an advantage on this subject is that we are dealing with it on a daily basis.

As a part of our submission, recognizing the cautions of Mr. Neumann—I appreciate them very much—I brought along a couple of tape recordings today. They are very brief, but I think they will give you a front-line, firsthand indication and outline of why Mr. Offer's and Mr. Cochrane's comments were on target. Access violations are serious matters. Unfortunately, in some cases they are so serious that they become a life and death matter.

I think I will go on record, although it was not part of my agenda, to say that approximately a year ago today one of our members committed suicide over exactly this issue here today. I really appreciated his mother's phone call about three weeks after his funeral. She phoned me and said: "Mr. Virgin, I am aware of what your group is doing, your interest in Bill 124 and access enforcement, etc. My son really valued those efforts and the work that is taking place at Queen's Park."

She was aware of all the efforts Mr. Cochrane was putting into this and she simply said, "It's just too bad that this bill couldn't have been passed soon enough to save the life of my son." Her other son is now a member of our organization, going through similar problems. I had toyed with the idea of bringing that mother here today to let you hear what Bill 124 means to her. It is a very serious piece of legislation and not to be taken lightly.

Because of that, I want to start by playing one or two of the tape recordings. I will tell you the background of how we get these. We receive so many hundreds, if not thousands, of incoming phone calls to our office lines that all incoming phone calls are received on a telephone answering machine. Therefore, you can understand that we have a tape recording of every call that has come into our organization in the last 16 years; not that they have all been recorded.

For the reasons Mr. Neumann has pointed out, we have therefore blanked out names, phone numbers and any references to individual persons, but before we get into the philosophy of why we are here today, I would at least let you hear at first hand how distressing it is for a person who has a problem that this bill is designed to address. Could you play the first tape?

[Audio presentation]

Mr. Chairman: I am going to seek the guidance of the committee here. I want to make sure we are on the right track here under right to privacy or whatever, whether you are proper in playing for us at a public hearing something you have taped from a telephone. Do you have the permission of the people you have taped?

Mr. Virgin: No, not specifically; that is why we deleted any reference to the individual person. All people, naturally, knowingly put their message on the machine, so it was not—I am not sure if you were referring to illegal tape recording. They put it on an answering machine, but we have deleted.

Mr. Chairman: I seek the guidance of the committee on this.

Mr. Virgin: Sure.

Mr. Chairman: Should we proceed with the hearings?

Ms. Poole: I certainly have no legal background on which to make a definitive answer, but I would think the fact they are anonymous would protect the identities of the individuals and I see no problem in proceeding.

Mr. Virgin: They are all anonymous. There are only two, anyway.

Mr. Chairman: No objection from the committee?

Mr. Adams: I have no objection.

Mr. Chairman: Okay, proceed. I am just being cautious.

Mr. Virgin: Sure; I appreciate that. That is essential, because we are here for the wellbeing of these people and it was a very difficult decision I had to make before bringing them here, but we are hoping to address a solution to help these people and that is what it is about.

Mr. Chairman: Okay. Proceed then.

[Audio presentation]

Mr. Virgin: That is a phone call from a fairly disturbed, upset, distressed gentleman who is having immense difficulty seeing his children. That is only one sample of several hundreds and hundreds of phone calls that our office receives, so please put at rest any suggestion or thought in your mind that the issue of access violation is not real. It is very real, and I think you can tell from the tone in that gentleman's voice that it is very real to him.

That type of distress, brought about by taking away the children from parents who care and love the individuals, is so severe that I would suggest it probably has no other comparison I am aware of in human life.

1530

I would like to refer to an example. Let's suppose that you went into a lion's den where there were some newborn baby lions and the mother was present. What would your chances be of removing those baby lions in the presence of that mother? I think every one of you knows that you would not come out of that lion's den alive, because you would be the dead person and those children would be preserved. Similarly, here in Ontario I think it is well understood that if you are anywhere that there are bears, people who are hunters and campers certainly know that you do not go near a bear with her cubs and you do not ever try to take the cubs away from a bear.

You can go through all the species of the animal kingdom, to the best of my knowledge, and when you start to play games with the offspring of those species you are dealing with a life-or-death situation. The only species I am aware of in which it seems to be acceptable to take children away from the parents is human beings. Well, we are here to tell you today it is not acceptable. We commend Mr. Offer, Mr. Cochrane and Attorney General Ian Scott for taking this issue as seriously as they have.

Consistent again with the chairman's cautions, I am not going to identify one of the members of our delegation who is in this room today. There are several of our members here, but one gentleman has not seen his five-year-old daughter since May 1986. That daughter was two years old at the time of the separation and he has had nothing but access violations since that



time. At Easter of 1988, he took presents over to his daughter. He has taken toys in the past and those toys have been destroyed and thrown back at him. He has in his possession some of those broken toys. The problem is real.

The daughter was two years old at the time of the separation. The mother and father attended a mediation session in September 1988, the daughter being five years old. When that member of ours, who is in this room today, went into the mediation session with his daughter she did not know whether he was the mediator or her father. That, I suggest to you, is an absolute disgrace and cannot be tolerated any further. That is the reason our Attorney General, Mr. Cochrane, Mr. Offer and several of their staff members have been working intensely on this bill, and I want to continuously commend them for that.

Another member of ours in this room at the present time has in the last brief period of time experienced 18 access violations. The custodial parent took the child from Toronto to London, and the only way he can exercise a continuing relationship with a two-year-old son is to drive back and forth. There have been the standard types of access violations: "No, your son is busy this weekend. Go back home again." The question is, "Can I see him next weekend?" "Well, the court order doesn't say that you have the right to see him next weekend."

In other words, there is no flexibility to vary the court order for purposes of his access, but when it is his right to have access, the provisions of the court order can be blatantly flouted and denied because there is no enforcement mechanism, as Mr. Cochrane and Mr. Offer have very appropriately pointed out.

I again would point out I believe that Mr. Cochrane's experience in this, my understanding in listening to his comments and my dealings with him briefly in the past, indicates he is very knowledgeable on this issue. I trust the members of this committee will listen to his comments and information. He does know what he is talking about.

Therefore, I come now to really what we came to you for today. We have laid out for you briefly what we believe to be the reality of this problem. I think it has been touched on repeatedly by previous submissions. We have only one request for the members of this committee and I trust that this one, single request is actually addressing Mrs. Cunningham's comments. She suggested that previous submissions—and probably for the next four days you will have more submissions dealing with custody, access, rights of grandparents and do they all come under Bill 124. Some of them do not. It has been part of the debate here as to whether they do or whether they do not. As Mrs. Cunningham asked, where do these people go?

Our request before you people today is a very simple one. You are aware, I believe, that there are currently three bills before the Ontario Legislature dealing with amendments to the Children's Law Reform Act: Bill 124, which we are considering here today; Bill 45, under the sponsorship of Don Cousens; Bill 95, under the sponsorship of Dr. Jim Henderson. They all amend the Children's Law Reform Act.

Mrs. Cunningham's concern was, how long do we have to wait to deal with some of the other issues, those of the GRAND Society that just spoke to us? If Bill 124 does not address their specific concern about grandparents, do they have to wait two, three or four more years? I think Mrs. Cunningham says she

is not prepared to wait two more years. I suggest to you, ladies and gentlemen, that none of us has to wait that long.

Our request today is that you simply amend Bill 124 to include Bill 45 and Bill 95. Please do not think that is totally outrageous. It is not, although it may not be politically the norm. I can appreciate that. Conservatives and Liberals coming together—heaven forbid—to agree on an issue. But I think one thing that has come out from every member of this committee who has spoken here today is that we are not talking about a political football. We are talking about the wellbeing of the children of this province. I suspect that probably most of the members sitting in this committee here today, and the people present in the back, have children who will be affected by this legislation.

With that suggestion, that this is the position we are taking and our request of you people today that you amend Bill 124 and not destroy Bill 45 or Bill 95, I would just like to make some brief comments on each of those bills and on why our organization feels all three bills are excellent pieces of legislation. Every one of them should be expedited. It is our view, in consultation with the authors of the latter two bills, that this committee has the opportunity and the power to do that within the next week, days or few months rather than, as Mrs. Cunningham has said, having to wait how many more years.

I am going to deal with Bill 45 to start. I think it is very significant that many of the past submissions—most of them—made reference to the importance of mediation. Again, to Mr. Cochrane's and Ian Scott's credit, Bill 124 includes reference to mediation. I suggest to you that Bill 45 deals with practically nothing but mediation. Mr. Neumann, could you advise me how much time I have?

Mr. Chairman: About eight minutes.

Mr. Virgin: Bill 45 deals with almost nothing but mediation. The reason we are totally in favour of mediation—I think all previous speakers have commented on and commended mediation—is that it is the total opposite of the adversarial process which is characteristic of litigation. Yes, there will be a need for litigation, but it has been our personal experience within our organization that if you bring those people together in a mediation process at the outset, they will not all resolve their problems, but you would be surprised how many of them will.

As a matter of fact, our experience has been that many mothers and fathers in the initial stages of their separation wanted to resolve the issues, until they got into the litigation process, which, by its nature, is designed to be adversarial, and now we have started the Third World War. Bill 45, I suggest to you, can eliminate a lot of that.

Richard Johnston, when he was here earlier this morning, asked if Bill 124 is not going to overload the courts. Mr. Cochrane, I believe, said: "Not likely. It could very well reduce the load on the courts." I concur with that. Even more so, Bill 45 provides that before you go to litigation, you try the mediation avenue. Every single speaker here today agrees, and I suspect that over the next days of these public hearings you will not find anyone who is opposed to the importance of mediation. Bill 45 lays it out step by step in very good detail. It is a well-laid-out piece of legislation.

Some of the additional reasons that mediation is so beneficial and

valuable: My understanding from the United States, where mediation is more widespread than here in Canada, is that where a settlement is mediated, there are far fewer cases that are reopened two, three and four years down the road. Why? Because the two parties themselves made the arrangement; with the help of a mediator, yes. In litigation, two parties are coming in at war with each other and a third party is coming along and saying, "You and you, and you're going to do it this way." Judges are not that abrupt and cold and callous, but the reality is a third party is banging down the gavel and saying, "This is the way it is." Needless to say, someone feels a winner, someone feels a loser, and back they go for variation after variation after variation.

1540

Bill 45 can help us to eliminate that. Ladies and gentlemen, please look at the importance and the merits of Bill 45.

Bill 45 also is the only bill in Ontario that presently specifically refers to grandparents. My heart went out to Mrs. Brooks as she was speaking to you people here, because I knew what our submission was on Bill 45. It specifically gives reference to an acknowledgement that Mrs. Brooks was asking for to the role of grandparents.

I want to move on to Bill 95 so that there is some time for questions from you people. That is Dr. Henderson's bill on the presumption of joint custody.

Dr. Henderson did not introduce that bill on a flippant, irresponsible basis. He researched thoroughly what is happening in the United States. My understanding is that almost 30 per cent of the states of America—my figures may be off slightly there—now have a presumption of joint custody. It started only eight or nine years ago in California and has spread since that time, and I suggest to you, ladies and gentlemen, that it is going to come to Canada. Let's make it now rather than later, consistent with Mrs. Cunningham's comments.

I think every person who has been at this desk today and who will come in the future has pointed out one common thread, and that is that children need two parents, not one. The sole-custody situation upon separation does one of the most devastating things that can happen to children and parents. It makes one parent continue as a parent; the other person, whether male or female, becomes a visitor in the lives of his or her children.

That is a disgrace. It does not have to happen. Bill 95 addresses that. Bill 95 can probably even be improved on, but it is better than what we have right now, so let's amend Bill 124 to include Bill 95.

I think probably you have heard the cliché—it is a cliché, but it has a lot of merit to it—that while two parents may divorce each other, neither parent divorces his children. Please support the amendment of Bill 124 to include Bill 95. No parent should ever be turned into a visitor with his own children, and that means, normally speaking, only two access weekends per month, seeing your children only four days out of every '28.

Is there any one of you here who would want to be in that situation, to be taken away from your children; you only get to see them four days out of 28? I do not think anyone wants that, and you have the power to amend Bill 124. I plead with you to do that.



On Bill 124 itself, the only criticism I have is consistent with past criticisms: the eight reasons for legitimate violation of access.

I have serious concerns about all of the comments on illness. I agree that if the child is ill, that is the time the child needs to see both parents. Never should that be a time when you are denying access.

My real concern is that, if I understand Bill 124 correctly, it allows one party to the litigation or the dispute here to be judge and jury as to what constitutes legitimate denial of access and what does not. To me, that is almost akin to my perhaps bringing civil litigation against Mr. Neumann or Mrs. Cunningham and we do not go before a third party but I become the judge and jury.

That is outrageous. We cannot have a party to this conflict being the judge and jury in determining when access violations are legitimate.

Thank you very much. I do not know if there is time for questions or not.

Mr. Chairman: We have two minutes. Are there a couple of quick questions?

Mr. Virgin: If I could, we have one more handout. There is information inside it. I am just going to ask my partner to go around and hand it out while we are carrying on.

Mrs. Cunningham: I am going to use this time to look at a couple of statistics and get your opinion on them. It is something you have not responded to with regard to Bill 124. I am looking at the part that talks about making a person pick up the expenses if they are not allowed their access.

We have had some suggestions that is not a very positive disincentive, although disincentives are needed, and the other part has to do with the compensatory access being very specific. Someone suggested perhaps we should say it should be approximately the same period of time that had been denied; others say we could use the word "reasonable." I wonder if you would take the opportunity to make some comments on those two parts of the bill.

Mr. Virgin: Two good points, yes. On the issue of reimbursing costs, I understand the point, the concern being that the custodial parent may not be able to afford those costs.

I guess I have problems with that simply because if the custodial parent cannot afford those costs, they are only resulting from the fact that the custodial parent broke the law in the first place. My suggestion is, if the custodial parent cannot afford the expenses of what basically ends up being a trip from North Bay to London or from Windsor to wherever to pick up the kids, then "Don't break the law in the first place, and you won't have to pay those costs." It is hard-nosed, but it is even more hard-nosed for the gentleman in this auditorium today who drives from Toronto to London and cannot get his children. The dollars do not mean a thing to him. He wants to see his children. To me, the solution is not to remove the cost from her; just tell her, "Don't break the law and there will be no costs incurred."

Second, compensatory time: I concur with Mr. Cochrane's comments that when you start using terms like liberal, reasonable, generous access—that has been the biggest source of problems for our members. Those terms are excellent

for a mother and father who get along well together. Those people do not need Bill 124. The only ones who need Bill 124 are the ones who say: "Oh, reasonable access? Well, it is not reasonable this weekend because I am going out with Aunt Martha, and it is not reasonable next weekend because..." and on and on. Therefore, I concur with Mr. Cochrane's or Mr. Offer's comments, one or the other, that reasonable access is one of the biggest sources of the trouble, and that is for these problem cases. We do not need a law for people who get along. Where there is a problem, we actually encourage our members to go back and change it to defined access. That is the only way you can enforce it. Does that answer your two questions?

Mrs. Cunningham: Yes. The only argument that we have been given, and you might respond to this one—

Mr. Chairman: We are out of time. The half-hour has expired.

Mrs. Cunningham: Perhaps we can talk about it later.

Mr. Virgin: Fine. I appreciate the time you have given us, Mr. Chairman and committee members.

Mr. Chairman: Thank you very much, Mr. Virgin, and your delegation, for your presentation and for taking the time to come here and share your views with us.

The next delegation is from the Human Equality Action and Resource Team. Sorry, I am skipping one. The next delegation is from the Child Parent Access Task Force, Mary-Anne Nixon and Joan Gullen. Sorry. I am informed that Joan Gullen is here; Mary-Anne Nixon is not. Welcome to the committee.

Again, I would mention that you have one half-hour to divide your time as you see fit between presentation and questions. Did you hear the note of caution I gave the previous presenters?

Mrs. Gullen: Yes. We are not going to be presenting personal material anyway. Was this distributed? We sent it by courier a couple of days ago.

Mr. Chairman: Yes.

#### CHILD PARENT ACCESS TASK FORCE

Mrs. Gullen: The Child Parent Access Task Force actually is one of many that are sprouting up around the province. All of them are trying to address the need and demand for supervised resources. Supervised resources are very closely integrated with this bill simply because it is an option to enable access and to make the bill workable.

We represent community-based service organizations. Our daily tasks and work are in helping separated and divorced families to return to some kind of normal interaction even though they are living separately.

Members of our task group include the Children's Aid Society of Ottawa-Carleton, the Family Court Clinic of Ottawa-Carleton, schools, and my own agency, which is a family agency. I am personally a social worker at the Family Service Centre of Ottawa-Carleton. I have been at this for 20 years, in several roles, counselling families, those where abuse is present and where it is not. I have been on both sides of the coin, helping noncustodial parents to

have access to their children, and conversely, being very concerned about families where access should be supervised. Also, I have done a lot of advocacy in social planning.

Our interest is not just tied to Bill 124. For a long time we have recognized the need for a third option when the initial custody hearings are going on, before the need for enforcement. We argue that if supervised access resources were present, the judges would not be faced with having to choose between full access or no access. Those two polarized options are often unfair to both parties. We are here today because Bill 124 makes the need for facilities even more imperative. We would argue that the bill is not workable in many cases unless there are those facilities in the community.

1550

Our particular focus is, of course, the best interests of the child, to normalize his or her life with the parents where there are good emotional ties to enable that to happen, but at the same time to protect children from potential for abuse.

I am not going to go through our brief except to highlight some sections of Bill 124 and our comments on them. We are certainly pleased that the bill acknowledges the frustrating and unfair games that are often played out around access. The earlier version, a couple of years ago, did not. This is an improved bill, although we have some improvements to suggest. I have spoken to Mr. Cochrane from time to time.

We are pleased to see section 35a. It is an improvement because it lists a number of areas in which denial is justified. This is the converse of the previous presenters because, for instance, erratic access by the noncustodial parent is a frequent experience of ours and has terrible impact on children: A child is sitting there with his or her bags for the weekend and father does not turn up; apart from the inconvenience of a Wednesday night when mother has arranged to go to a class and he phones an hour before and says, "I'm not coming." Those are realities. Those things happen.

We are glad the act recognizes the ways in which harassment is followed through where there has been previous violence. That is very real. I have seen that happen many times. On the doorstep a lot of the verbal abuse gets repeated that went on when they were together.

Then, of course, there are real risks of abuse for the children. I am very much aware of many parents who are tormented by the potential. More often than not, those fears are well justified.

Section 35a does not, however, address the perspective of the child who says he or she does not want to go. That may be an indicator that there is abuse present with the noncustodial parent or it may just mean that the child has other plans. It really bothers me when a child has to go to the noncustodial parent when he or she has other plans. In our work, we enable that to happen as smoothly as possible. As the gentleman said earlier, where there is some mutual trust, that can often be worked out satisfactorily. In the majority of cases it is, certainly.

We do not think, however, that the legislation is consistent throughout in establishing the criterion of the best interests of the child. We would like to suggest that this legislation, to be workable, should first broaden the definition of "ability to parent." This is a rather nebulous phrase and



does not really give a lot of guidance to the court. We would suggest that something be written in here to allow for third-party testimony from agencies such as our own.

We are really very concerned about cases where there are indicators but it is difficult to bring evidence on a level that is acceptable in court. That makes us very wary of having access other than supervised access. We would also like to suggest that we doubt the hearing in ten days is a very realistic objective.

We want to suggest it not be limited to oral testimony. I say that because we know that women, particularly those who have been abused and intimidated and have what I think one lawyer in Toronto called a "mentality of appeasement," which I think is a good term, do not have the confidence to handle that oral testimony in court, because the dynamics continue to play out in court. The father in this case might be very articulate and present himself very well and the confidence of the woman drops. Anyone who has any understanding of what a history of violence does knows that.

We would like to suggest that under section 28a, which speaks to varying orders and specifying days, etc., there should be introduced the power of the court to order supervision.

We would like to say that supervised access, which is embedded in this bill, is not a true option unless the resources are available. In fact, it makes a mockery of the bill in many respects. The best interests of the child where there is an enormous amount of conflict between parents can best be addressed in a neutral setting, which a supervised facility would offer. It also of course protects the child where there are real or suspected risks to that child's mental health or where there has been abuse or suspected abuse.

It also offers the chance for assessments, and that is fair to the noncustodial parent because it would allow him or her to be assessed by third parties, not just through one event where you go and you are interviewed in a very artificial setting, but over a period of time to be able to observe the interaction with the kids. When you have that assessment, a supervised access would certainly be a favour to noncustodial parents. It is also an opportunity to relay parents to other resources.

There has been a lot of resistance by different ministries about the responsibilities for funding these kinds of resources. First of all, I would like to say that very often relatives are just fine and you can work that out. The grandmothers and grandfathers are often very suitable resources for supervised custody. But its availability to most families is very limited. The resources across the province are very spotty, very limited, and the children's aid society's resources, when it is able to do it, are limited to its own clientele.

We have spoken to many family lawyers and they would really welcome supervised facilities. There is a responsibility for supervised resources that really flows from this legislation and you cannot escape it. When different ministries are approached, they quibble and say: "It is that ministry; it is not the Ministry of the Attorney General and it is not the Ministry of Community and Social Services," or whatever.

I would say that if you are going to take this seriously, surely there is a capacity to transcend these ministerial boundaries unless you are using it as an excuse, and that often is the case, but you just cannot avoid that

responsibility. For people in my work, in the majority of families, as I say, we can find some relatives but it has to be mutually agreed upon.

I guess I just want to say in conclusion that the funding is necessary and the community-based resources can be organized, and this legislation is not workable unless you provide that.

Mrs. Cunningham: Thank you for a very commonsense presentation. Obviously, you know what is going on out there. I too wish that there were a great deal more support services in the way of supervised access.

I am wondering if you have looked at this bill along with Bill 45 and Bill 95 at all. Were you here for the previous presentation?

Mrs. Gullen: No. Our group has not studied it, but I am somewhat familiar with the issues involved in Bill 45 and Bill 95, the presumption of joint custody and mediation.

Mrs. Cunningham: And the access, supervised access.

Mrs. Gullen: Yes.

Mrs. Cunningham: I wish you would, because I think we have an opportunity here to solve a lot of problems. Perhaps one of the reasons we are not looking at the supervised access is because of your very concern, and that is that there is a responsibility for providing the community-based services to support it.

My thinking is that if we had supported it—I would like you to comment further on this—the need for Bill 124 would be somewhat minimal. If one had a preventive program, where people did not have to go into the courts because they were sent by their lawyers to a mediator or some supervised access program, perhaps the judges would not have as much of a need for Bill 124. I would like you to respond to that.

1600

Mrs. Gullen: Yes, I make the distinction between supervised access and mediation. Mediation, of course, is the process by which people work through, if possible. I have problems about mandatory mediation where there has been violence. I think a lot of people do. Again, it has to do with the power and balances and what I referred to, that nice good phrase that says a lot of it, the "mentality of appeasement" that women who have been abused go into it with.

We are calling for supervised access facilities so there is not a long drawn-out custody battle where the only choices, as I said, are full or none. Very often a judge will have to order none if he is concerned. Yes, it would precede custody battles. It would still be part of the litigation that goes on in establishing custody, but I think it would pre-empt a lot of long, tortured conflicts.

Mrs. Cunningham: One of the reasons, of course, for the introduction of this bill is the very long time frame, which Mr. Cochrane advised us of, before anyone has any action. When they go to the lawyer on the first day, they often wait as long as—I think we were told—nine weeks. One appreciates that in the life of a child and the life of a family that is a very long period of time. You can refer them to the programs you are familiar with. I

think at the same time we are looking at prevention. Maybe one never has to go any further into the courts. So I support the things you were saying.

In looking at Bill 124, there are two other parts I wish you would speak to because I have mixed feelings about them. One part in there says that if you do miss or—

Mrs. Gullen: Oh yes.

Mrs. Cunningham: You know the one with the costs involved.

Mrs. Gullen: The costs can go both ways.

Mrs. Cunningham: That is right, but if they go either way, do you have any feelings at all on that with regard to animosities in families? We are trying to talk about something being in the best interests of the child. There are enough things to discuss with your child. These are the realities of life, that people are angry during this time in their lives. You find a lot of faults with either parent. If somebody has to fork up the charges or the price of the gas or the meal that one had to put out because the other did not get access, I suppose we have got one more thing to feel very angry about, especially if one is short on cash at this time in one's life. I just wondered how you felt about that particular aspect of Bill 124.

Mrs. Gullen: If you want to speak generally, women generally do not have as much cash as men do. The figures are all there about how the disposable income of men rises after separation and the disposable income of women drops, and my experience is that women operate on a much smaller income even with the support payments. So that can be harsh. If there is shown to be malicious intent in denying access—a lot of these are never as clear-cut as being malicious intent, let me tell you. It is often very difficult to know the truth of the situation.

Mrs. Cunningham: I suppose if it is difficult to find out the truth, it makes it even more difficult to fork out some money.

Mrs. Gullen: To enforce compensation; yes.

Mrs. Cunningham: I just think it is another variable that makes for more anger; that is all.

Mrs. Gullen: I also think it is a variable that becomes punitive.

Mrs. Cunningham: That is right.

Mrs. Gullen: I do not like it personally.

Mrs. Cunningham: I bring my personal opinions to this arena as well.

My last question is, if you do miss your access visit there is a clause in Bill 124 that talks about the time made up, and it is quite specific in time. I wondered if you have looked at that one at all. I think it is section 3.

Mrs. Gullen: I know the one, where if it has been denied and it has been wrongfully denied, then you have to have compensatory time. I think that is where, if there is a third party involved, not necessarily formal mediation, it is very useful. There is such a distinction between counselling



and formal mediation, as you know. The role of the mediator is meant to be very neutral, whereas in counselling you have a little more latitude in how you play that.

Mrs. Cunningham: My fear with the way it is written—again, in my experience as a supervisor for a time of a custody and access project in London, Ontario, a number of years ago—is that the usual direction to the person was, "You come back next Wednesday night at five o'clock, and you can come two Wednesdays in a row." In the interests of the child, he might have something better to do that night and a Sunday afternoon might be more appropriate.

Mrs. Gullen: That is right, and that can be introduced if you have a third party they can go to to work that out. My concern is around erratic use of access as a pattern. I am not talking about just one or two missed times when the noncustodial parent did not turn up, but where there is a pattern, and I have seen that more often than I like.

Mrs. Cunningham: How do you fit the mediator into this bill? You talk about mediation a lot. How do we fit it in?

Mrs. Gullen: I do not talk about mediation; I talk about counselling.

Mrs. Cunningham: Counselling, then.

Mrs. Gullen: There is a big difference. Mediation is a very formal process that takes place before you establish custody.

Mr. Chairman: Mrs. Cunningham, I think we should move on to Mr. Reville. Thank you for your questions.

Mr. Reville: Thank you for your presentation, Mrs. Gullen. My original question was that I did not hear you talk about your concerns about mandatory mediation. In your answer to Mrs. Cunningham, you did mention the concerns I have heard you mention before. I just wondered if you had changed your mind and I am pleased to know you have not.

I do not really have any questions, except to say that your point about the child's wishes not being listed speaks particularly strongly to me, having been through a horrible custody and access situation personally, when my daughter said, "I just don't want to go and see my mom, because it's the school play this week and I'm the star."

Mrs. Gullen: That is right. The best interests of the child here would be to go to her school.

Mr. Reville: Seeing your parents at that time is not the most exciting thing in your mind; you want to be in the play. I do not know what to do about that. Maybe we can get that put in there somewhere.

Mrs. Gullen: I think the act should be gone through to be consistent, especially in section 35a, that the best interests of the child should be paramount in looking at those.

With all due respect to the previous presenters—I do not know if they are still here—that tape that was played bothered me, and I am speaking personally, not for my group. It bothered me because I would think that if there were, not a mediation session but a counselling group that was

possible—there was a tone to that which suggested that man was possibly unstable. That is not at all to say the cause, that it was unstable, but the one they chose I would question and would think that family should be seen by a third party.

Mrs. Cunningham: Which is what the group wanted as well.

Mrs. Gullen: Is that right? Okay.

Mr. Reville: You would support an amendment to this legislation that would require the ministry to establish supervised access programs and facilities. You would like that, would you not?

Mrs. Gullen: We want this to be taken seriously enough that there is funding for supervised access. You know the funding is very short and very—what is the word I am looking for?—not permanent.

Mr. Reville: Will-o'-the-wisp funding.

Mrs. Gullen: The Lakeshore Area Multi-Service Project is about to close. There is one in Mr. Sweeney's riding, I think, an experimental one. There needs to be a policy attached to this legislation.

Mr. Reville: If I had not been well-off, we could not have had supervised access.

Mrs. Gullen: That is right.

Mr. Reville: It cost me \$400 a time to do it. Wonderful stuff, eh? Thanks, Joan.

1610

Mr. Jackson: Briefly, again, Joan, I appreciate your reference and support you completely with reference to mediation. You even implied that it may be imposed in cases of violence. It cannot be underscored enough to us as legislators in dealing with this issue.

I am intrigued by the top of page 5, where you talk about the best-interests test. Since that is the only clause in section 24 dealing with the best interests of the child which has been expanded, the reference to the ability of each person seeking custody or access to act as a parent, I am interested in your suggestion in subset (i), "the willingness of the person seeking custody...to encourage the child to enjoy a good relationship with the other parent."

Would that not rest with the child, the test as to whether or not "My mother was saying this about my dad" or "When I visited my dad, my dad was saying this about my mother"? That is more up front. That is very simple to define, but does that not put the child in the position of having to be called upon to clarify that point?

Mrs. Gullen: No, what often happens is one parent undermining the other parent.

Mr. Jackson: I am aware of that.

Mrs. Gullen: Again, it is a very tricky one to get at the truth of.

Mr. Jackson: But is access to the truth of it through the child? I am very nervous about judges and their treatment of these matters when you look at women's violence and all of the matters. I am trying to read this as a judge and I see this section that was referenced earlier. I am saying that with that included—there may be good reason to include your suggestions—if it were now in the bill and I was looking at it as a judge and one party accused the other party of misrepresenting the other parent, the only way I could satisfy myself would be to ask the child, under oath or privately, whether those items were said as opposed to relying on hearsay that the child is alleged to have said to the grieved party that these matters were said.

Mrs. Gullen: That is why you have advocates for children. I think there are less intimidating circumstances in which to seek that out and there would be a number of indicators. You would not go into that unless there were indicators otherwise; you would not do that as a matter of course.

Mr. Jackson: Finally and quickly, I wanted more clarity on that and I wanted clarity on subset (j), the one immediately following this, where you talk about the "wishes of the child and the ability and willingness of the parties...to satisfy the needs of the child."

I am very nervous about that recommendation, because when I see families that come before me—say, a two-year-old child—that child's needs are for nurturing, for love, for warmth, for suckling, for a whole series of needs at that time. When the child is 12 or 13 and is impacted in a material sense in the world we live in, her desire is to have the most fashionable clothes. We have to be very careful in this area, because there could be a cogent argument put forward that, "My daughter wants designer jeans and I can provide those."

Mrs. Gullen: That is right. You have hit on a very common—

Mr. Jackson: I know and I am very concerned about that. Am I misreading that? I would want to be very careful about that, because we have already heard a reference from a gentleman who has not left the room about a structured access, and he is not even 100 per cent sure as to why it was done was his articulation. I am concerned about that imbalance where a judge, again, can look at that and say quite frankly the daughter is quite upset, advancing into her teen years, with her access to more material things in life. Maybe I am reading something into that.

Mrs. Gullen: I think what you are referring to is the often-used seductive use of someone who has more money to be able to buy clothes for teenagers who like to have nice clothes. The whole point of (j) is to allow for third-party testimony and to try to address the fact that the ability to parent, as it is presently in the legislation, is so nebulous.

Mr. Jackson: That was the question I was trying to get out in front of the grandmother, but I am going to have to reserve my time for a direct question to the ministry on that.

Mrs. Gullen: That whole phrase really needs to be broadened. I think I have hit my time.

Mr. Chairman: Just about. Mr. Carrothers, did you have a question?



Mr. Carrothers: I will pass. We seem to have run out of time.

Mr. Chairman: Thank you very much for taking the time to research your material and appear before the committee.

Mrs. Gullen: Thank you. I hope you will all fight for finances.

Mr. Jackson: May I ask you a question very quickly, before the next deputant? It has to do with a point that was raised by Joan Brooks, the previous deputant. That has to do with what is currently the status of the issue of resources made available for the kind of counselling and mediation settings, services that are being suggested here. What is the status of the government's attention to that question in Mr. Sorbara's all-ministry panel that is reviewing family violence?

It is obvious that there is a component of review required here. Perhaps staff could make an inquiry of Mr. Sorbara's office to get an update as to where that sits in the loop, whether or not it has the priority, whether or not there have been specific meetings with the Ministry of the Attorney General, the Ministry of Community and Social Services, the Ministry of Health, any of the delivery ministries which were addressing the very fine point that was being raised here. I wanted to raise it later when other groups came, but I felt it fairer to do so before the weekend perhaps so that the ministry could be so apprised.

If we could get a brief update on where that interministerial advisory group is on that subject, it would make more sense to us in terms of understanding whether we have a legal bill that may be out of sync with the services that may be being considered for delivery by the government.

Mr. Chairman: Thank you for your question. I think we can refer it in both directions and see what comes back, through both our researcher and our ministry people.

Mr. Jackson: I am not holding my breath.

Mr. Chairman: Our final delegation today is the Human Equality Action and Resource Team. Representing this organization are Gordon Morris and Richard Kettle.

Welcome to the committee. You have half an hour. You may divide your time as you see fit between presentation and answering questions from the committee members. I caution you that this is a public forum. We are live on television and you should be cautious about your references to private matters that may be before the courts or that may at some point appear before the courts.

#### HUMAN EQUALITY ACTION AND RESOURCE TEAM

Mr. Morris: Thank you. My name is Gordon Morris. I am the secretary-treasurer of HEART, and I had the dubious responsibility thrust upon me this week of being the spokesperson. The gentleman to my right is Richard Kettle, who is the vice-president and public relations director of our organization.

I would like to refer to the package that we have presented to you and draw your attention to the invitation. At the risk of sounding like an advertisement, we have included with our package a personal invitation to each

of you present. Our first annual meeting will be held in a week and a half. The necessity to refer to that is the fact that—right at this moment, I am feeling nervous—we are one year old.

There have been many issues raised in this past year, of course, one of them being access enforcement. If I had my druthers, I would be speaking to you on behalf of our attitude towards joint custody. However, I will attempt to stay away from that today. I think that access enforcement is definitely necessary. It falls far short of our current need to amend the legislation with regard to our need for presumption of joint custody.

1620

I am grateful to be here and thank you for the opportunity to speak on behalf of the Human Equality Action and Resource Team, which we affectionately refer to as HEART. We have drawn about ourselves not only a group of people desiring access enforcement but also custodial parents who wish to encourage their ex-spouse to exercise access, so we speak from two angles here. It would seem that the existing climate somehow discourages continuing access. I am hoping that your committee will be able not only to address the issue of access enforcement but also to address the issue of continued access by people who have become reluctant for a variety of reasons to exercise that access.

I would like to refer to our first proposal with regard to domestic violence. Of course, we know there is more than one type of violence. However, the legal system currently deals more adequately with physical violence than any other other type of violence. HEART has a concern that there is too much emphasis put on physical violence. At the time of marital breakdown, people are under considerable amounts of pressure; frequently, in the short-term situation, one resorts to physical violence but does not have a history of physical violence, and that violence was not performed against the child who would be visiting a noncustodial parent away from the situation which raised the physical violence. We would like to see you take out of here any reference to any violence against anyone other than the child or children to be visited.

Our second suggestion to be considered: There is a list, starting on page 4 of Ian Scott's proposed legislation, that deals with what constitutes wrongful denial of access. There should be safeguards and checks incorporated in this section for the protection of the noncustodial parent. This amendment is entitled "Access enforcement legislation" and should not be approached on the basis of access denial legislation.

Specifically on item 5 is our suggestion 3: If the responding party does have reasonable grounds to deny access because the child is ill, then there could be provision right here in legislation for makeup time as near in the future as possible when the child is not ill, so that would not be a further excuse to the custodial parent that if Johnny has a runny nose, he should not see the noncustodial parent that weekend. That would be a deterrent for using any type of medical excuse, because if makeup time is readily available, then the custodial parent is only putting off what will inevitably happen. Therefore, co-operation is encouraged.

Suggestion 4 from HEART refers to item 7 on the same page. On numerous occasions during the preceding year the moving party, the access parent, without reasonable notice or excuse, fails to exercise his existing right to access. Under the proposed legislation, this gives the custodial parent the right to deny access.

Again, this is quite an open, blanket statement, because what we are addressing here is trying to remedy the problems of access denial and what has been happening in the history of the existing situation is that the access has been denied and has not been enforced. If we now say people have the right to continue to deny access, this is causing a further problem. We would like to offer consideration for the conduct of the custody parent also in item 7, so that both will be taken into consideration.

Our proposal 5, on motion re failure to exercise the right of access, etc., is that there should be more specific relief so that the court has a better guideline.

Excuse me; I will go on from there.

Proposal 6 refers to the section under order for relief, clause 35(6)(b), requiring the responding party to be reimbursed. We would like to see more specific suggestions drafted directly into the legislation.

I know when I first came to this and became interested politically, became interested because of my own situation, I was very surprised at the discrepancies between the way the laws are written and the way the laws are interpreted. I think you have a very serious responsibility, and I am not envious of your responsibility, to try to draft the laws in a way that can be interpreted the way you intended.

Suggestion 7 from HEART, in regard to oral evidence only, is that I would like to see a provision directly worded into the legislation to take into consideration schedules of nonworking parents versus working parents so that perhaps the oral evidence could be heard at a time suited for the working parent. Also, we have a concern that with nonworking parents who have substantial time on their hands, possibly there could be abuse of this particular system because of how easy it is.

On item 8, HEART's suggestion to this assembly in regard to the scope of evidence in the hearing: We really believe that frequency of occurrence in access denials should be taken into consideration. The concept that a denied-access noncustodial parent could be before a judge in 10 days is excellent. The concept that this particular incident can not be used not after 30 days does cause a great deal of concern, because it rules out other solutions and suggests that litigation within that 20-day time period is the only solution to access denial.

1630

Sometimes the better approach would be to accumulate incidents. Each incident does not in itself directly require drawing everyone before a judge. However, at the judgement of the noncustodial parent, a continuation of denial may accumulate to being a plot or a plan. One individual incident can be overlooked. If there is a history of occurrence of denial, any one incident may seem to have a legitimate excuse. However, cumulatively, over a time period, that may not be true.

Suggestion 9, motions made in bad faith: We would like to see further clarification. This is not immediately understood by the committee in HEART that worked on this.

Suggestion 10, order restraining harassment: We would like to see this as a two-way street. There should be a reciprocal order available in this



legislation preventing the custodial parent from harassing access by the noncustodial parent.

In addition to those direct references to the existing suggestion which is before the House, we also have a section we have entitled part 2, and we would like some consideration taken of these other suggestions that should also be included, we believe, at this time to enhance the situation for parents trying to receive adequate access to their children.

Item 1 is in regard to the work schedule. Here, we need a degree of flexibility with regard to being able to accommodate a working parent's need to change schedule. There are, of course, conflicting problems here because of the fact that, on the one hand, we want very specific access times that can be enforced, and on the other hand we want access times that can be enforced to accommodate the schedule of the visiting parent.

I have no idea how you resolve these two issues, but there is at least one situation of a person who has come to us where the wife asked, "What is your schedule, dear?" Then the proposed access directly corresponded to previous arrangements, the previous outstanding schedule.

We believe that there should be provision in the legislation that the custodial parent may not remove the child or children from Ontario without the written consent of the noncustodial parent.

We also think there should be strengthened legislation with regard to continual denial of access. More serious consideration should be given to the possibility of custody reversal and a joint-custody order. Again, we have touched on the existing problem of interpretation because the present law allows for that. To the best of my knowledge, that has never happened in Ontario.

Item 4 again addresses the issue that past practice of both the access and the custodial parents should be taken into consideration.

HEART would like to see more readily available supervised access or access depots for situations where the parents cannot, for whatever reason, find it in their ability to co-operate. One of the clichés, for lack of a better word, that we have adopted is: "We are divorcing our ex-spouse. We are not divorcing our children." While a marriage is intact, parents have incredible control, legal rights and responsibilities over their children. With the present solution of removing those rights from one parent, although understandable on the surface, we need stronger provisions to prevent the noncustodial parent from being stripped totally of all rights.

In cases of continual problems, the access depot I am familiar with in Hamilton is working exceptionally well. The one in Etobicoke has a complaint of underfunding. That whole issue needs to be addressed very seriously. It would be interesting to have a co-operative arrangement with the federal government and have something drafted in its day care programs to allow also for dropoff depots at day care centres.

Our suggestion 6: We feel very, very strongly that direct reference to grandparents and extended families should be included in all this legislation, because access to grandparents is equally as important as access to the noncustodial parent.

Our suggestion 7: We have worded in our proposal here "strong

encouragement" to enter into mediation. I personally hold the view that there should be mandatory entry into mediation.

Our suggestion 8: The wishes of the child need to be taken into consideration and how that is determined; the issue that was addressed directly before I got here. The wishes of the child need to be taken into consideration on an ongoing basis and should be a point that can be referred back to in each case of access denial.

We thank you for the time you have allotted us today and we hope you will have the wisdom to draft the necessary legislation. Again, I am not envious of your responsibility.

Ms. Poole: I appreciate a number of your suggestions as being very helpful. However, I was quite dismayed by your first proposed amendment regarding domestic violence. You indicated that you would like to take out the provision against violence except where there is violence against the child. I am sorry, but I would like to go on record as finding that to be totally unacceptable, just as violence in our society today is unacceptable.

There is no doubt that there are many stresses and strains an individual undergoes, but I do not think we as a society can ever condone violence. I think it is just as harmful for a child to see one parent hit or abuse the other as it is for that child himself to be battered. I really take strong exception to your suggestion that we remove that from the act. I think that as a caring, compassionate society, we cannot afford to condone violence. You may wish to comment on that. Mine was not in the nature of a question, it was in the nature of a comment.

1640

Mr. Morris: Again, we know that there is more than one type of violence that one person inflicts on another. Currently in legislation there is a great deal of ability to deal with physical violence but one of the shortcomings with regard to existing legislation is to not adequately deal with other forms of violence.

Ms. Poole: But surely you do not improve the legislation by taking out a reference to violence altogether, except where the child is concerned.

Mr. Morris: The name of the act we are dealing with right here is access enforcement. We are trying to improve the situation for the noncustodial parent, who has been historically suffering from a lack of enforceable access. For the purpose of this act, for increasing the ability of the noncustodial parent to exercise access, I would think that would be appropriate, to take out reference to violence.

Perhaps what should be addressed here is the issue of one-time violence or a history of violence. There should also be reference to a one-time violent person and a so-called reformed violent person. If other issues of the access depots could possibly be implemented, which may or may not be done soon, then a situation that occurred at one point in time may never occur again. If we were to suggest to a person who at one point in time in his or her life had been violent that that should tar him for the rest of his life, then certainly that does not seem like an appropriate amendment to the laws in the name of access enforcement.

Ms. Poole: I think, though, you will note that--

Mr. Chairman: Ms. Poole, I would like to get the other two people in, if I could.

Ms. Poole: Fair enough.

Mr. Adams: I will be very brief. Mr. Morris, I am sorry I had to step out for a while. I saw the beginning of your presentation on TV in my office and then I missed a piece, but your group has clearly given the bill a great deal of thought. You have a variety of suggestions, and some of them I find very interesting; some of them I find less interesting.

I may have missed this. Are you generally supportive of the bill and you simply see modifications to it, or are you actually envisaging it being changed radically?

Mr. Morris: I have a concern if you would consider the possibility of stopping everything because of some opposition. I would imagine that you are having opposition from men's rights groups and I imagine you are having opposition from women's rights groups. HEART is not either a men's rights or a women's rights group; we have both in our group. The idea of your abandoning your course is frightening. Even though I would prefer to be addressing joint custody, it is definitely necessary that we have access enforcement.

Mrs. Cunningham: I will just change my question.

Mr. Chairman: That sometimes happens.

Mrs. Cunningham: There are two bills that were tabled before this bill, Bills 45 and 95. Are you aware of either of them?

Mr. Morris: Yes.

Mrs. Cunningham: I suppose my great concern, because I want to take this opportunity to solve all of the problems and improve the whole Children's Law Reform Act in this specific area, is that we take this opportunity to do just that. I do not know what you mean by delay, but my experience in government means two or three years and I would rather delay by two or three weeks or months in order to take a look at what you are so concerned about, and that is this whole thing about access and this whole thing about joint custody. I would like you to respond to my observations right now.

Mr. Morris: I am not sure I understand what your point is or what your question is.

Mrs. Cunningham: Perhaps you would not, because you have not been involved like I have, just for a very short period of time, but you learn very quickly that sometimes, if one has an opportunity to change a piece of legislation like we do, and you said you were aware of Bill 45 and that you were aware of Bill 95, one of which has to do with joint custody and the other with custody and access, and one has the rights of grandparents specified in it as well, this is an opportunity right now to change an act. It does not happen frequently. In fact, we have been looking at this particular act now for a couple of years, and it is only four or five years old but very quickly we knew we had some problems with it. You know that.



Here is an opportunity to change it. In the life of a child five years is a long time, and in the life of a father. We have an opportunity to change it now. As a politician, I know those opportunities do not come often. We are lucky to have this opportunity, but my point is—

Mr. Chairman: Pardon me, Mrs. Cunningham, I think Mr. Morris—

Mrs. Cunningham: I was asked to clarify my question. Sometimes it takes me a long time.

Mr. Chairman: I was going to say, would you get to the question?

Mrs. Cunningham: Most times it takes me a long time. I have not learned the benefit of the 30-second clip at all, as you have noticed.

Mr. Chairman: That is about what you have got left.

Mrs. Cunningham: You are right. I was planning on less time, so perhaps I have made it clear that obviously we are in a political arena right now, hopefully not with political attitudes towards a problem here, but we have an opportunity.

What you just said would give some members of the committee or members of the government the opportunity to say, "Well, it isn't that important right now," and I do not want them to have the opportunity to say, "We'll leave that till later," because I do not think we should be leaving it until later. Do you agree or disagree with me?

Mr. Morris: I think that the answer is what I just gave to this gentleman here. It is no. It would be very frightening to me to abandon corrections to the law to make access enforcement enforceable. Definitely, I have a preference for joint custody, and part of what you are saying would suggest to me that this committee can look at more than just amending Ian Scott's bill.

You strike me as being a person who is not politically motivated. It is odd to me that we have excellent private member's legislation available before the House that has had its first reading, Dr. Henderson's private member's bill for presumption of joint custody. There is also the bill that Don Cousens is bringing forth, Terry O'Connor's old bill. It seems to me that there are political undertones in regard to ignoring it. I think it has a far better provision for grandparents and a far better provision for makeup time.

I do not know the parameters of the authority of this assembly I am sitting in front of. If you can include provisions that Terry O'Connor has adequately covered for grandparents and makeup time, then definitely include it is my suggestion.

But in case there is still any misunderstanding, do not abandon the corrections that you are working towards just because there are better ones that should be made. If everything has to be done at one time because this will not happen again for five years, then definitely I would like you to open up the doors to make serious consideration for provisions that Dr. Henderson has put forward.

Part of the responsibility or mandate of the organization is public awareness. We find so frequently when we speak to a variety of groups about the presumption of joint custody that their immediate reaction is that joint

custody should not be forced on parents who cannot co-operate. There is the problem of immediate pressures at the time of separation which took years to accumulate and will disappear in a short time. After that time, joint custody can work.

There is the problem of time right now in that I would like to respond to this in about four or five hours.

Mr. Jackson: We can leave the two of you here.

Mrs. Cunningham: I would just like to say that I got the answer to my question and I also got the answer I wanted.

Mr. Chairman: I should state that Bill 124, and not the other two bills, has been referred to this committee for hearings for the four days. I am allowing considerable latitude for presenters in making reference to the other two bills because I feel they are interrelated.

Mr. Morris: That answers my question.

Mr. Chairman: But the Legislature has referred only the one bill to us for the four-day hearing.

Mr. Reville: I think it is important for people to understand that Bill 45 and Bill 95, whatever their merits may be, are private bills. The fact that the government has chosen to proceed with this bill indicates what the government's priorities are. Those other two bills, as far as I am aware, are not scheduled for debate at second reading, nor do I believe they can be while this bill is before the committee.

It is totally appropriate for you or any other deputation to make whatever deputation you wish. If you want us to think about the whole realm of matrimonial causes, then by God, we will think about it. But you should have in your mind that we are really kind of looking at this bill. If members of the committee wish to lead amendments to the bill that reflect other approaches, they may, in fact, do that. But it would be wrong, I think, to make you believe that Bill 45 and Bill 95 have anywhere near the status that Bill 124 has.

Mr. Morris: I think I understand that and I did try my best to stay on the topic that I was invited here for.

Mr. Chairman: Thank you, Mr. Morris, and I thank Mr. Reville for elaborating on what I was trying to clarify.

Mr. Reville: Oh, it's all right.

Mr. Chairman: That is the second time today you have helped me out.

Thank you for your presentation and for taking the time to come before us and share your views with us.

Members of the committee, that ends our agenda for today. We are scheduled to reconvene Monday morning at 10 a.m.—sharp, I would remind you—in this room. Monday afternoon will be in a different room.

The clerk advises me that you may, if you wish, leave your papers here.

You may, However, wish to take with you the briefs that relate to Monday's hearings to read over the weekend.

The committee adjourned at 4:54 p.m.





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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHILDREN'S LAW REFORM AMENDMENT ACT

MONDAY, APRIL 10, 1989

Morning Sitting



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Neumann, David E. (Brantford L)

VICE-CHAIRMAN: O'Neill, Yvonne (Ottawa-Rideau L)

Allen, Richard (Hamilton West NDP)

Beer, Charles (York North L)

Carrothers, Douglas A. (Oakville South L)

Cunningham, Dianne E. (London North PC)

Daigeler, Hans (Nepean L)

Jackson, Cameron (Burlington South PC)

Johnston, Richard F. (Scarborough West NDP)

Owen, Bruce (Simcoe Centre L)

Poole, Dianne (Eglinton L)

Substitutions:

Farnan, Michael (Cambridge NDP) for Mr. Allen

Offer, Steven (Mississauga North L) for Mr. Beer

Clerk: Decker, Todd

Staff:

Swift, Susan, Research Officer, Legislative Research Service

Witnesses:

From the Heritage of Children of Canada:

Weingust, John, Legal Counsel

Lusher, Sylvia, Founder

From the Alternative Counselling Services:

Ally, Dr. Bruce, Executive Director

Individual Presentation:

Prince, John

From the Metro Assaulted Women and Children Advocacy Group:

Perkins, Morag

From Interval House, Toronto:

Goodfellow, Susan, Counsellor

Preston, Mary, Counsellor



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Monday, April 10, 1989

The committee met at 10:06 a.m. in room 151.

CHILDREN'S LAW REFORM AMENDMENT ACT  
(continued)

Consideration of Bill 124, An Act to amend the Children's Law Reform Act.

Mr. Chairman: Ladies and gentlemen, this is a meeting of the standing committee on social development called to consider Bill 124, An Act to amend the Children's Law Reform Act. Today our entire day will be spent on hearing delegations, and we have a very tight schedule to fulfil. Even though we do not have all of our members here, we have permission to start so that we can try to keep to our schedule.

I would first of all ask for the representative of the organization entitled Heritage of Children of Canada, John Weingust. Welcome to the committee. Before you begin, I should inform you that you have one half-hour to divide as you see fit between presentation and questions. I would caution you against referring to private cases or matters which may be before the courts or may appear before the courts.

Mr. Weingust: I am only going to deal with some of the cases that have already been dealt with, not the ones that are pending.

Mr. Chairman: My job is to caution and inform you that you are in a public forum, on television. The risk is yours, not ours. We are protected.

Mr. Weingust: Yes, I understand. Thank you.

HERITAGE OF CHILDREN OF CANADA

Mr. Weingust: I represent an organization called the Heritage of Children of Canada, which is composed mainly of grandparents who have either experienced or been denied outright access to their grandchildren. I act as the organization's legal adviser and I am here to express some of the organization's concerns with Bill 124, in that the bill does not go far enough in protecting the rights of grandparents in this province.

While Bill 124 has made amendments to the Children's Law Reform Act in the sense that it has addressed itself to the problems of both custodial and noncustodial parents in enforcing access rights and obligations, including domestic violence, it is basically silent with respect to the rights of grandparents. In fact, the bill is totally silent with respect to these people, nor is the word "grandparents" ever mentioned anywhere in the bill.

I wish to deal with only one section of the bill, namely, section 2, which amends section 24 of the Children's Law Reform Act. Subsection 24(2) of the act is re-enacted with only minor wording changes. There is no new clause with respect to grandparents, and the only clause by which grandparents are given the right to apply for access is actually clause 24(2)(h), which says "the relationship, by blood or through an adoption order, between the child and each person who is a party to the application or motion."

Although that clause gives grandparents a road to access, in the sense that they can bring the application to court, that road is most often blocked by what the courts have interpreted to be in the best interests of the children, which has resulted, in my respectful submission, in great injustices to the grandparents of this province who have been deprived of the love, affection and emotional ties they have with their grandchildren.

Let me first give you examples of some of the cases which I have personally been involved in and the hardships which grandparents have encountered when trying to get access through subsection 24(2) of the Children's Law Reform Act.

The first case involves a woman who was deserted by her husband when her child was very small. The woman found herself to be a single parent with the obligation of supporting, caring for and bringing up a child under financial and emotional stress. Living in a neighbourhood of low-income people with rampant crime, she witnessed her own brother shot during a robbery and her child harassed and beaten during school hours. She naturally became an overprotective parent, but nevertheless succeeded in moving from the neighbourhood, educating her child, teaching him music and having him graduate from college.

The son married and a child was born, and it was after this blessed event that a permanent rift resulted between the son and his mother. The rift actually started with the son's engagement and somehow the relationship with the future daughter-in-law never caught on. The friction between the mother and the daughter-in-law continued into the marriage, and without going into the details of whose fault it may have been, it nevertheless ended after the birth of the grandchild and culminated in the point where the grandmother was forbidden to see the child. All negotiations for reconciliation were unsuccessful and the grandmother took the only course open to her, namely, applying to the family court for access to her grandchild.

The son and his wife opposed the application with all the bitterness that a trial can muster, with evidence of the son stating that the mother was overbearing during his childhood, setting restrictions on his freedoms as a youth, interfering with his boyhood friends and displaying hostility to his fiancée and present wife. It did little good that the mother denied these allegations and tried to explain the circumstances of a single parent raising her son. It is important that the mother never abused her son or ever deprived him of any necessities. In fact, the opposite was true. There was also no evidence that when the grandchild was born the grandmother ever abused the child. In fact, the evidence was that she was as overconcerned about her grandchild as she had been overconcerned about her son.

The end result was that the court refused to give her any access to the grandchild, notwithstanding the grandmother's willingness to abide by supervised access or any other condition that the court wished to impose. Although there was no evidence of any bad relationship between the grandchild and the grandmother, the court nevertheless, using the criterion of the best interest of the child and because of the rift in the relationship between the applicant and her son and daughter-in-law, felt itself bound in protecting the nuclear family, feeling that the child might be affected by the bitterness of a dispute in which the child had no part.

In coming to that conclusion the judge relied on precedents of cases, although there has been very little law in Canada on grandparent access. This case was heard by a provincial court judge of the family law court, and in

citing another case which he relied upon, which was also the decision of another provincial court, this quotation was made. The quotation, relying on a provincial court case called Wylde and Wylde which I will refer to in a minute, he stated as this:

"It is clear from the law under the Children's Law Reform Act, as well as the thrust of literature on the subject, that grandparent access is a right of the child and not the grandparent. Grandparents have a right to apply for status and to be heard. Historically, they have never had an absolute right to access over the parents' wishes. The first and most important question to be asked in these matters is, is it in the best interest of the child to visit a grandparent? Will the child benefit from such access, either actually or potentially, or will a child be affected adversely, either actually or potentially?"

I will be coming to those words of the potential risk that the courts have relied on using subsection 24(2) of the act as the precedent for their particular judgement. In another quotation from the case of Wylde and Wylde, which I have referred to, which is, of course, a reported case by a provincial court judge and upon which the courts relied, these words were also spoken by the provincial court judge:

"Under section 24(2)(g)"--and that is the one about the blood relation--"the court must consider 'the relationship, by blood...between the child and each person who is a party to the application.' The question then becomes, how important is the blood tie to the children? What benefit is there in knowing their 'roots'?"

"The second most important question in my view is, of what significance are the rights of the parents and their opposition to access (in this case, the mother, although it appears the father is opposed as well)? While clearly parents have a right to refuse access, nevertheless other parties, such as grandparents, upon refusal, now have access to the court, not to enforce rights (as they have never had any) but to acquire rights to access. The onus is clearly on the grandparents to show a benefit to the child before the court would interfere with parental rights."

Here again, the court has been quoted as saying that the grandparents have never had any real rights. All the onus is placed upon the grandparents to prove any rights to access, what little rights they have.

In this particular case, Mr. Chairman and members of the committee, not only was the grandparent denied the right to access to her grandchild, but because the grandparent was aggressive in pursuing her rights and being somewhat demanding in that factor, the court went even further and penalized her by awarding solicitor-client costs, which came out to about \$4,300 against the grandparent for bringing this matter into court in the manner in which she did.

So she was penalized doubly: one, in denying her right to the grandchild; two, not even costs on a party-and-party basis, but costs on a solicitor-client basis, which was a penalty against the grandparent for bringing her matter before the court.

Now let me give you an example of a case where a grandparent tries to obtain access to a grandchild who is no longer in the custody of a parent. This is a situation where the parents separated, the mother remarried and the child was sexually abused by the second husband, so that, in the long run, the



children's aid society became involved, making the child a ward of the crown and placing the child in a foster home.

The grandmother, who had a wonderful relationship with the child throughout the years in spite of her son's marriage failure, is now being deprived of access to her grandchild on the basis that the children's aid society feels it is more important for the child to establish a firm relationship with the foster family in the hope that the child will become adopted. They feel that access by the grandmother, who wants only the very best for her grandchild, will interfere with the prospect of the child being adopted. So here we have a grandmother who is deprived of this enriched relationship which she had with her grandchild, because it might deprive the child in the future of being adopted.

The last case is a reported case, which shows you some of the things that happen in cases where grandparents try to get access, and this one is even more interesting, because we have the paternal grandmother fighting against the maternal grandmother. In this case, it was the paternal grandmother who applied for access to the child, who was in the custody of the maternal grandmother. This is a reported case called *Tramble v. Hill*, 1987, *Reports of Family Law*, third edition, at page 85, a decision of the Ontario unified family court.

#### 1020

"The paternal grandmother applied for access to the child who was in the custody of the maternal grandmother. The father had been sentenced to six years incarceration for the murder of the mother; however, in one year, he was to be granted some form of greater freedom. Previously, the father had flagrantly broken conditions of bail and his mother had not been able to control his behaviour. The maternal grandmother was opposed to any access by the paternal grandmother because of the potential difficulties related to the possibility of the father's presence and because of the profound intrafamily hostilities."

The paternal grandmother was denied access, although she was not really part of any of the hostility.

There is an annotation on that case by Professor McLeod of the faculty of law of the University of Western Ontario referring to the law, as it presently is, in relation to grandparents' rights. He says:

"The position taken in *Tramble* regarding collateral family access rights represents a social view of the family. In the stereotypical Canadian family, the child has contact with his/her parents. Any contact with collateral family members is at the pleasure of the parent. The law, as set out in *Tramble*, merely reinforces the fact that families in current societies are 'nuclear' families, which often offer little contact with collateral members. Sociologists today are questioning the continued validity of the nuclear family model. In reality, as adults move through different relationships, children form varied attachments with members of different 'families.' Indeed, many children today have two sets of parents and four sets of grandparents. The reality of modern life is that a biological relationship may become of decreasing importance to the child as the number and nature of the individuals who have contact with the child changes."

He further says:

"In today's society, only exceptionally will a grandparent have such

involvement in the child's life that it would subject the child to sufficient risk of harm to require that contact cease. For most grandparents and collateral family members, the main hope for access lies in co-operative and considerate parents. Aside from this, either the courts or legislators must decide, politically, that there is an institutional bias in favour of grandparents, for example, in order to protect and nurture the child's sense of identity, unless the same would pose a real danger to the child."

What the professor is saying here is that in all cases—and, of course, which have been adopted—basically the grandparents are at the mercy of the custodial parent as far as having any right of access to the child is concerned. Because the courts have taken the position that even though the grandparent may not be involved in the sense that there is any real danger, they have interpreted subsection 24(2) to be even if there is some potential danger in which some comment may be made by the grandparent once the grandparent has a right to see the child. What the change should be, in my respectful submission, to this section is that it must set out changes that will emphasize that it actually has to be a real danger to the child before a grandparent should be deprived of any access.

Because of the injustices to grandparents in the cases indicated, it is important that this legislation step in to see that the great cultural bond between child and grandparent is protected and on behalf of the Heritage of Children of Canada, I would make the following proposals.

1. That in the case of the custodial person who is not a parent of the child, like a foster parent or someone else, the grandparent should be in the same position to claim custody or access of the child as if the grandparent were in fact a parent; and the court, in deciding that issue, should use the same guidelines it now follows in resolving disputes between parents in relation to custody and access. In other words, where you have someone who has custody of the child who is not a parent, a grandparent should be able to be in the same position as a parent in applying for custody or access of the child.

2. That where the custodial person is a parent, a grandparent should be entitled to access as a right, unless it imposes a real danger, as opposed to a mere potential danger.

3. That any application by a grandparent with good intentions ought never to be penalized with costs on a solicitor-client basis unless it can be shown that the application was a subterfuge for gaining something other than access to the grandchild.

What I would like to see is that section 24(2) should have another clause added, clause (i) after (h), which would indicate that where grandparents are involved, the right to access should be denied only where same would pose a real danger to the child.

In this way, the courts would be bound by the legislation rather than by the precedent that has been established, certainly in this province, that where there is even any type of potential danger, which means really any possible danger or a could-be danger, they have no alternative but to follow the law as it presently stands in this particular province. Section 24(2) should certainly be amended to where it would at least mention the name of grandparents and give them not only a right to go to court but actually a right to come into court and establish some ground for the necessity of access to children by grandparents.

Basically, those are my submissions. I will be happy to answer any questions you have in that regard.

Mr. Chairman: Members of the committee have an opportunity to ask questions for a few minutes.

Mr. Owen: Thank you very much, Mr. Weingust, for your comprehensive brief. Before I ask my question, just by way of background, how large is your organization? How many members are there?

Mr. Weingust: It is not my organization, but I understand right now—

Mr. Owen: The one that you are representing.

Mr. Weingust: Possibly there are about 100 members, but there are a lot of outside members who have not really joined who have expressed concerns about the same problems as the organization at the present time. There are only about 100 now.

Mr. Owen: The question that concerns me from what you have said is that obviously the present legislation allows the grandparents the right to claim custody or access. Obviously, there have been many cases where that has happened. In some instances, the grandparents have succeeded; in some instances, the grandparents have not. In all of the cases that I have read and that you have cited, the courts are trying to say that their determination is based on what is best for the children; not what is best for the parent or the grandparents or the uncle or the foster parents, but what is best for the children.

If you try to give stronger representation or more power to any group, are you not having the effect of constraining the court? If the judge makes a wrong decision, in your view, you can always appeal. Should we not try to give the full scope and exploration opportunities to the judge who is seeing and hearing all the parties involved? The present legislation, I understand, does that. I am wondering if, in our attempt to be concerned for grandparents, and all of us are, we might be actually doing a disservice to that essential first goal and priority, the children.

Mr. Weingust: That is the whole issue. The issue is what is in the best interest of the child. I agree with that totally and the courts have used that. However, I cannot see how it could be to the detriment, that it would not be in the best interests of the child, to see its grandparents and to have access to them unless—and I make that—there is some evidence that to do so would be a danger to the child. I agree with that 100 per cent—I have never disagreed with it—and the courts have followed.

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However, historically in this particular province what has happened is that in the interpretation of the cases dealing with what is in the best interest of the child, the courts have come out and said, "Even if there is a potential danger." In other words, there can be an excellent relationship between the child and the grandparent. However, if the relationship between the grandparent and the son or the daughter is not 100 per cent and if there is a rift between them, the courts feel we have to sort of overprotect this child in such a way that even this rift might spill over towards the child.

That, I think, is depriving the child of the enrichment of having a



grandparent, and the cultural backgrounds between these particular parties. I think you are interfering with the child.

However, the question is, what is in the best interest of the child? We certainly cannot leave that up to one individual. We leave it up to the court, which can only follow the precedents as we have set them down. Because of the precedents that have been set down, they have used the words "potential risk," not "actual risk."

As Professor McLeod says, society is changing right now. Why should only grandparents be in the position where, because there might be a potential risk, we deprive the grandparent of access to the child, while if there is a father who is a murderer—and there is a case in Ontario, as you well know—who murdered the mother and is now presently in court, he has access to the child only by reason of the fact that he is a parent. He is a murderer, but he is a parent and the child visits the father in jail, it has been reported.

I do not see anything wrong with that either, but basically, if we can give a murderer that right because he happens to be a parent, why should we deprive grandparents only because of the potential danger that might be there, that actually is not but might be there, because of a strained relationship between the grandparent and the son or daughter, as the case may be.

I do not know if that answers your question.

Mr. R. F. Johnston: I would say on that matter, of course, if the father or mother were thought to be a potential danger themselves, under the present system their access can be denied by the courts through making the child a ward of the state, etc.

Mr. Weingust: Yes. It has to be actual, though. That cannot be potential.

Mr. R. F. Johnston: I would argue that under the Child and Family Services Act a child can be deemed in need of protection on the basis of a possible problem, even though the onus of proof is another whole matter.

I wanted to ask you something following out of this notion of the collateral family members or extended family members. In the reading and work you have done on this, has there been—there is no discussion in what you have said, the man you were quoting, of a hierarchy of rights within those collateral members.

Mr. Weingust: No.

Mr. R. F. Johnston: In terms of a grandparent versus a sibling of the parent, etc. I guess my question is whether or not any judges have put their minds to that if you have a challenge for access in the case of a—

Mr. Weingust: Like an uncle or an aunt.

Mr. R. F. Johnston: An uncle versus a grandparent, etc. Has there been any—

Mr. Weingust: Actually, there is really no distinction between it, because as it is described in subsection 24(2), blood relations would be an uncle or an aunt. It does not put them in any better position than the

grandparent. I would have thought, as you thought, that a grandparent would be sort of next in line, but the court does not distinguish. Where it says blood relations, it means any blood relations.

Mr. R. F. Johnston: I guess I am wondering, because of what you are arguing as an amendment to subsection 24(2), whether you are now suggesting a hierarchy within that. You are suggesting that specifically the grandparent be indicated.

Mr. Weingust: That is correct, yes, I think.

Mr. R. F. Johnston: Again, you are looking at it under the benefit to the child section, I am wondering if maybe we can discover if there is any research that is available which would indicate that a hierarchy within the bloodline connections is valid socially or whatever. I would just be interested to know if there is anything we can find.

Ms. Swift: I have read a number of cases, but I have not found any in which there is a hierarchy set up that way. In the paper that I gave out on Friday, there is some suggestion that the onus is different, in the case of a parent, from any other collateral members. The suggestion is that it is presumed to be in the child's best interest where a parent is seeking access, so the person who is opposing access must prove a detriment. But I cannot recall any cases where there has been a hierarchy discussed.

Mr. Chairman: Mr. Weingust, would it be possible for you to provide us with copies of the court cases you referred to for our researcher?

Mr. Weingust: No problem. I would be happy to do so.

Ms. Swift: I have them. They were all cited in the paper that I presented.

Mr. R. F. Johnston: It would also be useful if we had your amendments separately because it will take us a while to get it from Hansard.

I think there are some problems with the wording of that kind of amendment under that section on best interest versus the rights to denial section. It is worded in a negative fashion, whereas everything else is sort of in a positive fashion. So if we could get that early to have a look at the language of it, I would be interested in seeing that.

Mr. Chairman: Thank you very much for coming before the committee.

Mrs. Lusher: Can I say one thing? I am the founder of Heritage of Children of Canada.

Mr. Chairman: Would you introduce yourself, please?

Mrs. Lusher: Sylvia Lusher.

Mr. Chairman: Your time has expired.

Mrs. Lusher: I know. It will just be one minute.

Mr. Chairman: Please keep it very brief.

Mrs. Lusher: I founded the organization. We have been far and wide.

It has been publicized in the papers, on radio and on television. I have people calling from as far as Calgary, in positions where they cannot see their grandchildren. I think it would be very urgent that we get to this point right now. We cannot wait. It has been too much and too long.

Mr. Chairman: Thank you very much for coming and sharing your views on this matter with us.

I would like to call upon Alternative Counselling Services, represented by Bruce Ally. Bruce, you have 30 minutes to present your information to us. You may divide that between presentation and questions. As I have counselled others, I would advise you that you are in a public forum and that you should use caution in referring to matters which are private in nature and may appear before a judge at some time.

#### ALTERNATIVE COUNSELLING SERVICES

Dr. Ally: Thank you for the opportunity to address you today.

My understanding is, as we look at the current status of the law, that the consideration is the spirit of the law. As it stands, when we look at the spirit of the law, I can name you innumerable cases over the last seven years that have come into our offices of people who have attempted unsuccessfully to access their children.

As it stands, my understanding of how the law reads—and I make no claim to be a lawyer; I am a psychotherapist—is that both parties need to agree to mediation. Some of the objections we have had come before us have included a lawyer saying: "Oh well, there is this thing called mediation. You can go and spend money," or, "This person approached you folks first, so you are not acceptable as a mediator."

In itself, my understanding of mediation is the person's impartiality. As such, obviously contact needs to be made by one party to a mediator. This should in no sense, way, shape or form detract from the actual process of mediation.

Let me tell you that in the seven years I have been in practice, I have seen numerous misquotes that have occurred in the legal profession. However, this is not burning lawyers at the stake. However, the process has become so sophisticated and refined that we now have papers coming out of the Family Court Clinic in Ottawa, for instance, by Dr. Wendy Cole, which categorize and give us statistics on the number of false allegations that are being made to parties in order to prevent them from seeing their children.

Let me say to you that when two people are married, even at best, disagreements occur, and this is not sufficient grounds to remove or restrict either party from seeing the children. Why then does it suddenly become the primary focus to prevent or encumber one parent from seeing the children after separation and/or divorce? I really do not know.

1040

The end product of that is what tends to happen most often in a separation and/or divorce; that is, both parties are subjected to a very adversarial system.

Let me tell you of the case of some clients who are fairly new to



Toronto, new Canadians. They had a disagreement and went to a lawyer and were told, "You need to get divorced," to the tune of meeting with the lawyer and spending some \$6,000 and finally getting sent to our agency. After three sessions, this couple is now back together. This is some 18 months later. The first proposition by the lawyer was to part these people. If this were just out of the ordinary, perhaps I could be satisfied, but all too often people are not able to access the law in its true form, the spirit of the law.

Let me tell you of a client who has spent \$109,000 in legal fees attempting to see her child. Certainly, her husband has spent a corresponding amount. This is ridiculous. At the bottom of this, what gets lost are the children. This is our legacy for tomorrow. This is what we need to look at, because unless we recognize the importance of children and unless we provide for their needs at this point, certainly our future will be endangered by their inability to deal with relationships which, as a whole, are part of what will be an ongoing process.

Dr. Heather Blume of McMaster University details in a study some of the effects of what happens to children from single-parent homes. Included in those effects are increased truancy, increased abuse of drugs and early pregnancy, among many others.

She also talks about the estrangement of children from one or the other parent. Separation and/or divorce is not a gender issue. It is not relegated to men or women. It is a very common, prevalent thing in our society today and, as such, the only people who, for the most part, suffer right now are children. What we need to do is to leave a legacy such that minimal harm, if any, occurs to these children.

It is my understanding that right now there are proposals by Dr. Henderson and Mr. Cousens with respect to the issues of what should be done with the area of mediation. Far be it from me to tell you what should be done, other than the fact that our children, our future, are suffering, and we need to be responsible for that at this point. Unless we are, we will have a legacy to look forward to that will be something that I do not think any of us can live with.

One of the current objections and/or problems that occurs here is that often it is said there are not enough mediators or mediation cannot occur. Certainly, in the private sector there exists an entire division of mediators who are available and have been available for some period of time.

In terms of the actual practice, very often this is stopped, prevented or hindered by a lawyer's desire to maintain the adversarial system which, in effect, provides his or her salary. With all due respect, we should not be concerned about lawyers' salaries here. We should be concerned about children's wellbeing.

If the process is going to be hindered and/or stopped simply by one party not agreeing to mediation, then in essence what happens is that the spirit of the law is violated. Over and above and beyond that, if we do not have the power to enforce this mediation, then even if it is to the cost or detriment of one child, we have failed ourselves.

My suggestion, my humble recommendation, is that all our considerations should be in the best interests of children. If we have a bill that can work with the spirit of the law, that is wonderful. But if the spirit of the law is constantly held back, prevented and/or restricted, then certainly that bill

must have teeth in it so that the spirit of the law can be enforced.

Thank you very much. I welcome any questions you may have.

Mr. Chairman: Thank you, Dr. Ally, for your presentation. I have one speaker on. Before I go to Mr. Owen, though, I would like to know a little about your organization, Alternative Counselling Services.

Dr. Ally: It was started some eight years ago. We now have three locations and offer culturally sensitive services in 12 languages. We are totally nonfunded. All of our 35 therapists attempt to meet the needs of the client base in the areas of divorce counselling, which is mediation, and reconciliation counselling.

Mr. Owen: The thrust of the legislation is and has been for some time that the court is trying to determine what is in the best interest of the child involved, but no matter which system you look at, you are always getting into the human factor of the parties involved. I have seen couples where no matter who the lawyers are, no matter who the mediators are, they are determined to have their day in court. They are determined to destroy. You cannot control the parents, often, in that setting.

I have seen certain lawyers who are always there to try to search out what is in the best interests of the persons involved, and I have seen lawyers who love to fight and, as you say, stress the adversarial. I have seen mediators who do a very sensitive job, who are qualified to do what they are doing. I have seen mediators who go in with preconceived notions, who are generally predisposed to go a certain direction for certain parties. Of course, often the judiciary is criticized. Often they try to be fair, but sometimes you will be able to predict what a judge will do in a set of circumstances.

So the human factor is there, no matter whether it is the process you are espousing or the process you are criticizing. The human factor is there. What is your response to that?

Dr. Ally: Indeed, the human factor is there. When you tell me of a client who wants his day in court, then my suggestion to you is that this person also is hurting, going through many traumatic experiences including emotional swings that may be wildly variant at times. What needs to happen for this person to best serve him or her would be also perhaps some individual therapy, which I understand this bill is not speaking to, but he obviously needs some help to cope with some of the feeling of hurt at the death of a relationship, which is a very normal process.

However, the point is that it is much easier to fuel that into a fight than— If it were let be and appropriate treatment were given, what would happen is that with time that would subside. I have clients who have been divorced for 13 years and are still enmeshed with each other and are still fighting because of the fighting dynamics that were set up initially. When you fight there is always a winner and there is always a loser. I do not like losing and I am sure you do not. You are going to want to fight back just the same as I would.

Mr. Owen: In this situation, quite often, they are all losers.

Dr. Ally: The most important loser here is our progeny, our legacy, the inheritance we are leaving for our children. That is why we need to look at the act.

Mr. Chairman: Do any other committee members wish to ask questions?

Mrs. Cunningham: Is it Mr Ally?

Dr. Ally: Mr. is fine.

Mrs. Cunningham: Is it Dr?

Dr. Ally: Yes.

1050

Mrs. Cunningham: I would like to ask a question based on your experience. You started by talking about mediation. Do you understand that Mr. Cousens's bill says, "shall"?

Dr. Ally: I do indeed.

Mrs. Cunningham: Do you feel strongly about the word "shall," enforced mediation, or do you have other ideas that you think would work better given your experience, and under what circumstances?

Dr. Ally: I have seen mediation where I have had clients come into me, both clients, and what we have done is put the issues of custody, which often get mixed into the entire separation process with issues of money—we hear of people going back to court all the time for more money, "If you give me this money, you'll get access."

What would happen if they were still married and the person was unemployed? The issues are very separate because of the trauma going on at the separation, and it is very natural and normal. It is the death of a relationship. People are not able to focus very easily. If there were some process so they could get help with that, and perhaps even suspend the decisions around custody and access for some period of time and then at a later stage look at those, that would be fine.

My only reason for agreeing and suggesting the enforcement would be that I have seen cases and instances where people, both men and women, have been prevented from seeing their children. I have seen one case, as late as December 23, 1988, where the man managed to get an enforcement order, had not seen his kids for four months, went to the police and their first response was: "This is a terrible time to be doing this. How could you do this to somebody else?" That is a judgement call that should not have come into the picture.

When they got to the place, the police told him, "We will not bring down the door." Now, I have also seen the same for females. "We will not break down the door. If she does not open the door, that's it." And that is essentially what happened, which in a sense even invalidated the enforcement order. It makes me wonder, was that in itself sufficient and should not more have been done. Who is suffering? The two children who are hiding behind the door? That is the essence and consideration.

I wish I could give you a pat solution of what would work, but every case has to be looked at individually and we have to have the scope within the bill such that it can be used if necessary rather than having to come back for further bills all the time.



Mrs. Cunningham: If I can get the emphasis of your presentation this morning then, you are telling us that in Bill 124, where we are talking a lot about the issues around access, we really should be talking more about the issues around counselling first, another process?

Dr. Ally: Possibly, and enforcement of the access and/or possibly enforcement of mediation for those cases that are necessary. If the automatic presumption is a fight, then of course the people will end up fighting; if the automatic presumption is co-operation, presumably co-operation will ensue.

Mrs. Cunningham: In looking at Bill 124, did you have any opinions on subsection 35a(4): "A denial of access is wrongful unless it is justified by a legitimate reason such as one of the following"? Did you look at that in any detail?

Dr. Ally: I did look at it, and let me suggest that my own experience has been that I have seen where people have actually found "reasons" to deny access that in actual fact turned out to be invalid. But until the children's aid society investigations occurred, until whatever else happened, the person who was being denied was indeed still denied.

I have also seen, and we all know this, that if I throw enough mud at you at some point something is going to stick. Even in your mind something will become cloudy. I have seen numerous people become estranged from their children because of that and I think we need to be very careful when we are going to fight.

Mrs. Cunningham: These reasons are written. They will be part of law, and I suppose judges will then look at them to see if any of them apply to the case. I am wondering how you feel about their being written in this format or if there are any you feel should not even be here.

Dr. Ally: I think every action needs to be there to protect children, but I think also the opposite side of that, that when you find a person perpetually continuing a cycle of abuse which is alleging abuse or restricting, then there need to be teeth in your bill to address that, because this does happen too. There are sick men and women out there who do this, and those people need help. If you do not address that, this process can go on as well.

Mrs. Cunningham: When you say "teeth in the bill," can you be specific?

Dr. Ally: Yes. It would be an inclusion of a process that allows some intervention by the court or enforcement by the court of some sort of therapy for the person who keeps using this in bad faith.

Mrs. Cunningham: Thank you.

Mr. Offer: If I might, there is some time left. Thank you very much for the presentation. From your responses, it is quite clear that you are very well versed in this particular legislation.

As you know, the purpose of the legislation is directed to providing an expeditious and inexpensive remedy for the enforcement of access orders especially. From your experience in terms of counselling and mediation, one of the possibilities given to a judge in terms of enforcing an access order is the question of mediation. From your experience, do you feel that will further

a positive impact in terms of enforcement of access orders?

Dr. Ally: I can see no impact other than a positive one. In actual fact, what I would like to see is that it would become almost mandatory for cases where this is occurring, because what it tends to do is involve the parties in question. That means that by having involvement, it removes the ego-dysfunctional portions that occur when you feel estranged from a battle, and that tends to negate the fighting that occurs.

If you have impact on something, then of course you are not going to want to challenge it all the time. It stands to reason. If, however, you feel, "Oh, well, it has all been out there as a third party," then you feel very estranged and you want to have impact. So, yes indeed.

I think it would be wonderful if that could be added such that the first party that goes to mediation—that mediator becomes the mediator doing it. There is an awful lot of politicking that goes on where a lawyer says, "I don't like this mediator because this mediator tries to go from this perspective or that." The important thing about mediation is it is impartial.

The other thing with the family court clinic is it has a backlog of eight to 10 months. Reality is that if you are in pain, you are in pain now. You do not need to be waiting eight or 10 months. Find a mediator; get it solved; get on with it. It will prevent your getting stuck, and you will move forward a lot quicker.

Mr. Chairman: Thank you very much for appearing before the committee. I found it most interesting. Thank you for sharing your professional expertise and experience with us.

Dr. Ally: You are very welcome. Thank you.

Mr. Chairman: At this time I would like to call upon John Prince.

Mr. Prince, welcome to the committee. You have 15 minutes for your presentation. You may leave some time for questions, if you wish. As with the others, I caution you against making reference to cases which are private in nature and may appear before the courts or are before the courts.

Mr. Prince: I appreciate that. \*

Mr. Chairman: Do you have a written submission?

Mr. Prince: I do believe that written submission has already been—

Mr. Chairman: Has already been submitted?

Mr. Prince: Yes.

Mr. Chairman: Okay. Carry on.

JOHN PRINCE

Mr. Prince: Basically, I am a father. I am here on behalf of Bill 124. I have been asking for some sort of enforcement for a number of years. I will not refer to my own particular case, just the fact that I have been denied access on many occasions. Under the present system, the courts are backed up in excess of three to six months. Of course, during that time of

going for access, you are denied even more access.

I feel that Bill 124, in its clause stating that it will be back in court within 10 days, will help alleviate a lot of the problem. I feel a lot of the frustration that spouses have, because it is not only a male side, although it seems to be more of a majority on that side—this will alleviate the problem and hopefully make the custodial parent a little more aware that he or she does have a responsibility to allow the visitation of the parent and the child. As I say, I have been fighting this for a number of years going back as far as before Bill 60 in previous government history.

I do not know what else to say, really. I have written everything down; I have submitted it. Is it not there?

1100

Mr. Chairman: That is fine. Thank you for your presentation. We will now entertain questions from members of the committee starting with Mr. Owen.

Mr. Owen: I have read your brief, and the amendments that are being proposed where the responding party is to give the moving party compensatory access, in other words, to make up for any times they have used access as a part of the battlefield. It is to address your problem that this is being introduced. The only thing I wanted to say was that when and if and hopefully this will become legislation, if you still see it is not working, if there is another difficulty with it, would you please let the ministry know? What you have described is a situation which has been ongoing for many, many years to, unfortunately, too many people. This, I hope, is going to work, and if it does not, please let the ministry know so we can see if there is another way we can get around it.

Mr. Prince: I am sure we will have to refine this bill even more, but I do not want to refine it now.

Mr. Owen: But it is a step in the right direction.

Mr. Prince: Let's get this bill passed first, definitely.

Mr. Chairman: Generally speaking, Mr. Prince, you support the bill in principle and would like to see it enacted?

Mr. Prince: At this point in time, I do. Like I say, there are probably going to be more refinements down the road just like any other legislation; at the present time, let's get it passed. The present system is just too long, too tedious and too heartbreaking to go through. If I get denied access, I have to shove it under the rug, because I know my children will be penalized even more if I go to fight for it under the present system. With the new bill, that will give me some teeth to help see my children.

Mrs. Cunningham: I have read your brief, and it is a horror story, there is no doubt. I think it takes a lot of courage to put that in writing, and I thank you for it. I wanted to ask you a question. You said you had been around since Bill 60. How long ago was that?

Mr. Prince: Bill 60 was the Progressive Conservatives' bill, I do believe, just previous to the Liberals taking over. As a matter of fact, it died after second reading when the election was called.



Mrs. Cunningham: So you are talking 1986?

Mr. Prince: Gosh, I have letters from MPPs in here dating back to 1975. That is how long I have been fighting for some—

Mrs. Cunningham: Since 1975?

Mr. Prince: Yes.

Mrs. Cunningham: How many opportunities in that period of time have you had to come before a committee like this to talk about the issue of custody and access?

Mr. Prince: None.

Mrs. Cunningham: One of the statements you made, that is, "Pass Bill 124," I agree with, and given the large Liberal majority and it being a Liberal bill, I expect it will be passed. My great fear is that there is so much to be offered in Bill 45 and Bill 95—one of the former Bill 60, if you take a look at Bill 45—that if you have waited since 1975, can you imagine how long it is probably going to be before we can wait and get any of the intentions of Bills 45 or 95 included in this bill?

I have been around trying to change legislation for a long time, not as a member of parliament but in other arenas, and I am told that even where it is practical and the government agrees, we cannot open up, for instance, the Day Nurseries Act, even though we have clauses in there, and we have known about them for eight or 10 years, that are not working.

So I agree with you that we need Bill 124, but I also think we need Bills 45 and 95, and if we do not do it now, given the way governments operate, we will not be looking at it for another five years. That would be my guess. If I were you, I would change the statement to say that in fact you really do, if you think you want this whole picture. I have read in here where supervised access, mediation and counselling would have been of tremendous value to you in the very beginning.

Mr. Prince: Yes, it would have.

Mrs. Cunningham: I am sure you must have some opinion on joint custody.

Mr. Prince: Yes.

Mrs. Cunningham: It is not that I am looking for specifics around this, but those two aspects are missing in Bill 124 and I wondered if you would like to make any comments on them.

Mr. Prince: To be quite honest, I have been so engrossed with Bill 124 that I have not even read the other two bills you are talking about.

Mrs. Cunningham: I appreciate your saying that. I have copies of them and you can take a look at them. I am noticing that many people who are coming before the committee who do have opinions on Bill 45 and Bill 95 are basically focusing on Bill 124 because that is the responsibility of the committee. However, I would like to underline, I suppose, that others really do have some strong feelings about pieces of legislation that could help us improve even further the Children's Law Reform Act with regard to children and

their rights and needs. That is what we are talking about.

I appreciate your honesty about not having had the opportunity to look at the other pieces of legislation. I will give them to you at the end of this hearing and hopefully you will make some observations if you have the time. Anything that you could add, given your experience, I think would be most helpful to the committee. Thank you.

Mr. Chairman: Are there any other questions from members of the committee? Seeing none, Mr. Prince, I again thank you for coming and sharing your views with us. Your brief was long and interesting. I read it going home one evening on the train, I think. Thank you for sharing your advice on the bill and your experience in that brief.

Our next delegation is the Metro Assaulted Women and Children Advocacy Group. It is not scheduled until 11:15 a.m., but if it is here we could proceed. Morag Perkins? Welcome to the committee. You have about half an hour. You may divide that time as you see fit between presentation and questions. Again, as I did with the other groups, I have just a note of caution on making reference to matters that may be before the courts. We are in a public forum.

Ms. Perkins: Since I have just handed out my brief, I will read it.

Mr. Chairman: I am sorry. I am having trouble hearing you. Would you speak more directly into the microphone, please.

Ms. Perkins: Since I have just given you my brief, I will basically read it and there will be time for questions if anyone has them.

Mr. Chairman: Okay. Carry on then.

#### METRO ASSAULTED WOMEN AND CHILDREN ADVOCACY GROUP

Ms. Perkins: I am speaking on behalf of a coalition of shelters, children's support services and legal clinics, all working in the area of wife abuse. We have been meeting to discuss this bill, its origins and ramifications for about two years, and so we bring to you today our considered response based on a wealth of firsthand experience and knowledge.

Our fears concerning this bill are not based on guessing or isolated cases. They are based on the collected experience of people working in the field of counselling abused women and children, and on a wealth of other data.

We have considered the inclusion of subsection 24(3), as set out in section 2 of the bill, "...the court shall consider the fact that the person has at any time committed violence against his or her spouse or child...." when assessing parenting abilities. This in itself is positive. However, this section does not offer women and children the protection they need. This section is outweighed by the overall sentiment of the bill.

Aside from this, the section we fear will do the most harm is subsection 20(4a), as set out in section 1 of the bill, which states that each parent "shall, in the best interests of the child, encourage and support the child's continuing parent-child relationship with the other." We are asking that it be deleted. A relationship cannot be legislated, and as this section reads, it may force dangerous relationships.

Since the majority of divorcing parents settle out of court, we can

assume that where and when possible, amicable access arrangements are made. Cases that do have to go to court should have special attention paid to the circumstances of the family's relationships. By the inclusion of subsection 20(4a), an unfit or abusive parent would have a greater chance of maintaining a relationship with those very children he has abused.

Further to this, the more frightened a parent is of the relationship between the other parent and the children, i.e., in cases of sexual abuse, the more likely it is that their concerns can be misconstrued as not acting in the best interests of the child.

Incredible as it may seem, what is already happening in Ontario, as well as the United States, is that mothers are being legally counselled not to come forward with allegations of sexual abuse in custody proceedings. The fear is not just that they will not be believed, but that they will be accused of undermining negotiations, as if to say women use sexual abuse as a trump card, an unfair advantage.

#### 1110

Omitting subsection 20(4a) in no way jeopardizes a continued parent-child relationship if both parties agree voluntarily. What the inclusion of the section does is suppose that the child will always benefit from a relationship with both parents after separation.

Research has been done in the US that indicates that often children are adversely affected by a continued relationship with the noncustodial parent. In case studies considered, the children with the most frequent access were the most emotionally troubled and behaviourally disturbed. Since a conflictual and abusive relationship between parents generally does not diminish after separation, children are often manipulated and brought into the dispute. We have seen children's thoughts and emotions turned upside down by access visits. They come back filled with negative perceptions of who is to blame for the abuse.

Access in disputed custody cases should not be automatically granted. We are asking that presently available research be heeded calling for further studies before any social legislation can respond accurately.

In the meantime, one available research report concludes that "present known indications emphasize the importance of assessing salient characteristics of the separating family to determine custody and access decisions." In other words, in disputed cases each parent should be considered for their parenting abilities. Most important to custody determination is the role of primary care giver before separation. Not only is the primary care giver most experienced in caring for the children, but the children are most attached to them. To remove the child from the parent they are closest to will obviously be traumatic for the child.

The research that has been done and the experience of abused women indicates that men who have been abusive during a relationship do not stop after separation; rather, the experience of women in shelters is that the abuse escalates.

There is documented evidence that illustrates this: 54 per cent of all assaults against separated women are committed by former marital partners; 46 per cent of all separated and divorced women in Toronto are being abused; 52 per cent of women who are abused by their partners prior to separation are



abused by their partners after separation.

There are equally astounding figures about how children are affected by wife abuse. Behaviour problems for children who have witnessed battering are 17 times higher for boys and 10 times higher for girls, and children who are exposed to battering have comparable problems to children who have been physically abused themselves.

These are alarming statistics and some recent research has indicated that in general it is not always in the best interests of the child to be forced into a relationship with their father. Granted, there is some research that indicates otherwise. We are saying, first, that if the relationship needs to be legislated, any benefits are seriously impaired, and second, that since present available research is conflicting and inconclusive, legislation addressing the issue should be deferred until such time as we have a more comprehensive understanding of the issue.

Research notes from a study done in California conclude, "In the absence of better and more convincing evidence, policymakers rely on conventional wisdom, that is unfortunately, an unreliable guide for social reform." And a University of Manitoba report on the enforcement of access concludes: "The empirical data surrounding this problem is conflicted. Obviously a more extensive study is required before programs are put in place....The delicate balance of valuable parent and child relationships cannot easily be established."

If subsection 20(4a) is included without the consideration of the points I have mentioned, it will do more harm than good. Abusers will be able to further abuse their children and possibly use them as pawns to get at the custodial parent emotionally and psychologically. This legislation would allow an abusive access parent a chance to undermine a child's understanding of abuse, to play on a child's emotions and loyalty in order to confuse their sense of right and wrong.

Children who are forced to continue a relationship with their abuser, or an abusive person, have a very troubled row to hoe. These children must unlearn negative and damaging behaviour and somehow assimilate these conflicting messages while still growing and learning to live with other children and adults. It is very difficult to explain to children that abuse—emotional, psychological and physical—is wrong, while forcing that child every week to visit the abuser.

Perhaps it would be wise to state here that when referring to abuse, we include emotional, psychological and physical. We are opposed to the use of the battered women's syndrome as the only instance where abuse has occurred. One hit or outburst of violence is sufficient to be able to emotionally and psychologically abuse those children and woman for a long period. It is damaging enough for children to grow up in a yelling, screaming, fighting household, but when they know that the eventuality of violence is real, it is even more frightening.

There is some question as to the effect subsection 20(4a) will have on the rest of the bill. If it is to have little effect, then we would ask that you omit it, as it is wholly damaging to the group of children and women we represent. If it is to have great effect, and we think it will, then we strongly urge that you strike it from the bill.

It is clear that this bill is aimed at alleviating access problems and

disputes. It is not clear how this need has been substantiated, as there is no documentation to prove it. A recent study at the University of New Brunswick revealed that fathers did not report access denial as a major or a minor problem. Women, on the other hand, reported major difficulty in getting fathers to exercise access. A University of Manitoba report concluded similar results regarding empirical research done into the question of noncompliance with access orders. The research that has been done indicates access conflicts are generally resolved and that intransigent access denial occurs in about one per cent of the divorced population.

In short, access denial is not a problem. Getting many fathers to exercise their access is a problem. So it is not evident that this is a problem deserving of amending legislation. What this bill threatens to do, though, is exacerbate the troubled area of determining custody and access by inadequately defining the factors to be considered. This is evident in subsection 20(4a) and subsection 24(2) which determine the best interests of the child. Again, who the primary care giver was prior to separation is not considered. Who has been taking the children to school, to the doctor, changing their diapers, preparing their meals? Should this not be taken into account?

Of particular harm is clause 24(2)(c), which states "the length of time the child has lived in a stable home environment" should be a factor in determining custody. Courts frequently decide that a shelter is an unstable environment for a child. For women and children who are forced to come to a shelter for safety, it is often the most stable environment they have ever had. Ironically, in seeking shelter to protect her child, the mother is accused of removing that child from a stable home environment, so we ask that this section also be deleted.

We also consider clauses 35a(2)(d) and 35a(6)(c) to be harmful to the interests of women and children. These sections state that should one parent deny the other access or fail to exercise access the court may appoint a mediator. Any inclusion of mediation in this bill is of grave potential harm to women and children who have been abused. To include this in legislation incites courts to encourage it.

Mediation itself is insensitive to power and balances that are evident in all relationships, and extreme in abusive relationships. The emphasis is placed on reaching agreement and very real reasons for not reaching agreement may be seen as blocking the process. Any reference to mediation in this bill, as with the duty of the separated parent clause, is wholly damaging to battered women and children and insensitive to any but amicable separations. Any incentive for courts to encourage mediation denies the reality of separation for couples where coercion, manipulation, fear, intimidation and lack of communication were present in the relationship.

Abuse and threats of abuse affect women most often in the intangible way of stealing any sense of self-worth, confidence and strength. Her ability to represent herself to her abuser or in his presence is seriously impaired. The abuser, on the other hand, is in the position of power, and so can represent himself as the stronger and better parent. Not only is he likely to win in a case of access denial, but with this bill it is likely he would win custody. While she is in the room, he is stronger and in power.

A research project, Court-Based Divorce Mediation in Four Canadian Cities, could not conclude definitively for or against mediation. Again, until more information is available, the overall benefits of mediation applied

across the board are not evident. Indeed, mediation itself assumes both parties have equal negotiating skills and work equally well in a clinical environment. The better parent is not necessarily the better negotiator.

Paragraphs 35a(4)(1) to 35a(4)(8) neither appreciate nor account for the experience of battered women and children in the courts. This section lists what constitutes legitimate denial of access. We consider it dangerous in the first place to list legitimate factors as these may be interpreted as strictly the only factors to be considered. This is a very sensitive issue, and not always so easily defined.

In the paper *The Enforcement of Access*, it is concluded that there is an extraordinary difficulty in finding the truth in access disputes. Further to this is the general difficulty of putting one's word against another's. What we see in courts now in these situations is that most often women are disbelieved. We do not see the inclusions in this section as adequate protection, although each statement is positive. This does not take into account the difficulty women experience in proving reasonable grounds. This section may also be too narrowly defined, setting up eight and only eight reasons for denying access.

#### 1120

In addition to these contentions, the use of oral evidence only, subsection 35a(9), and a speedy hearing within 10 days of being served, subsection 35a(7), make it very difficult for abused women to represent themselves and their children in court. The effects of violence and sexual abuse on women and children are not always visible, but always evident by a lack of confidence, clarity and general ability to stand up to the abuser. These are the effects of intimidation, threats, violence and manipulation.

This bill would require a woman to provide unequivocal evidence to make an allegation or to deny access, especially with the inclusion of the duty of the separated parent. These factors render this bill wholly harmful and damaging to the court experience of abused women and children. These sections are particularly harmful in instances where sexual abuse has occurred. As with other physical abuse, it is most often accompanied by threats and intimidation that further impede disclosure.

Not a great deal in this bill acknowledges the sensitive issues involved in any separation, but most important, it blatantly whitewashes the issue and defies the reality of what abused women and children experience in courts.

Again, it is important to avoid the definition of battered women's syndrome as the only instance that creates a power imbalance. Psychological, emotional and occasional physical and sexual abuse are equally successful at overpowering and diminishing the strength and confidence of women and children. A child only needs to be sexually molested once to live in shame and fear. A child only needs to see his or her mom smacked around once to drastically alter the way he or she will conduct future relationships. When a little child hears Dad tell Mom, "I am going to kill you," the child believes him, with good reason.

We would like to conclude by stating again that this bill, as it reads, is unnecessary and harmful. It addresses only a small segment of separation and access disputes. We need a law that in some way addresses the needs of children and women who have been seriously abused by their fathers and spouses and the courts. Until there is proof that access is a problem that needs



resolution, until there is proof to back up the generalities that this bill is based on, we are strongly suggesting that the system in place remain, whereby each case is determined individually. Real lives are at stake here. We cannot afford to experiment.

Finally, we are asking you to remember that this bill, first and foremost, should understand and respond to the needs of children. Thank you.

Mr. Chairman: Thank you very much for your interesting presentation. We have several members who wish to ask questions. First of all, Ms. Poole.

Ms. Poole: I very much would like to thank you, Ms. Perkins, for your very sensitive brief today. I do want to discuss several issues with you, though. One was the very strong attack on mediation. Most of the presentations we have had to date and much of the evidence put before us very strongly encourage mediation as taking some of the adversarial nature out of divorce and separation. In fact, I think it is fair to say that a number of people who have come before us have said they would like even stronger mediation put into the legislation.

I think we all realize that you are coming on behalf of a certain group in society that has had a very horrible experience and that your first priority has to be to protect that group. I guess my question to you is, do you have any empirical data to back up your statements on mediation? I noticed that several times in your brief you did quote various authorities, but specifically on mediation, I would like to know the background on this.

Ms. Perkins: The one I do quote on court-imposed mediation in divorce in four Canadian cities could not conclude either way whether it was better. The point for mediation with abused women is that it assumes both people in mediation can represent their needs.

You have a relationship where one has been abusing the other for however long. This person has been intimidated, has lost some sense of what they can do and what is fair. They have been blamed, intimidated, hurt, frightened. Just because another person is there does not mean they then can always pinpoint what their needs are, when that person is in the room. Mediation is not a process which would sufficiently bridge this problem or deal with it.

Ms. Poole: I am going to leave the mediation for a moment, because I suspect Mrs. Cunningham will be looking at that a bit later. I would like to go to the strong opposition to subsection 1(4a) that you have expressed.

Perhaps I should give you a little background on where I am coming from. I am a very firm believer that both parents should have rights to a child as long as they are fulfilling their parental duties in a way that is satisfactory to society. I am a feminist, yet I think it is very important that both parents, in so far as is possible, be involved in the bringing up of the children.

For five years I was a primary care giver at home with my children, so I was the one who took them to their doctors' appointments and school and was there when they came for milk and cookies, that type of thing. But I would still say my husband played a very important role in their lives. To me, true equality for women will only be reached when men are taking as much of a role in care giving as women. I am talking about a fairly healthy relationship.

Mr. Chairman: Are you getting to a question at this point?

Ms. Poole: Eventually, Mr Chairman. In fact, I will try to speed it up and ask my question.

I see 1(4a) fitting in with this philosophy, and when you counter it by the fact that there is a section in about domestic abuse, not only against the children but also against any member of the family, does that not give protection so that the courts will be looking at the best interests of the child and that 1(4a) are situations where it is in the best interests of the child for the parent to have access to that child?

Ms. Perkins: I do not think the section on domestic violence is adequate to protect women and children. What you are talking about, your husband, he probably does not abuse the children. What we are talking about is that if he has been at all abusive to the mother or the children, then it is not in the best interests of the child to have an ongoing relationship with the father.

Ms. Poole: But that was the specific reason the section on domestic violence was included. How would you like to see that strengthened?

Ms. Perkins: I think it would be strengthened by omitting "the best interests of the child" and the duty of the separated parent. The offensive part about it is that it assumes that it sets up a situation where decisions are going to take into account what each parent does to encourage the relationship. If a man has been abusive to a woman, if she is forced into encouraging a relationship between him and the children, then that sets up a whole avenue for more abuse. He can manipulate and intimidate and draw the children into it.

Mr. Owen: First of all, I would ask, is it possible to have our research staff check out and verify some of the studies or reports that give these statistics? Some of these statistics are the highest I have ever seen with regard to the incidence of abuse. I have seen others that have not come anywhere close to this, and I would just ask if we could have some advice as to the accuracy of these figures that are spelled out.

Ms. Swift: Mr. Owen, you are referring to--

Mr. R. F. Johnston: That is not exactly fair to the witness, if I might say so.

Mr. Chairman: And we are using up the delegation's time. Would you direct a question to the delegation? If we get a break, we can hear from Susan later.

Mr. Owen: I would like to point out that the reading of 4a is an obligation to encourage what is in the best interests of the child with relationships, not only on the part of the parent who has custody towards the other parent but on the part of the parent who does not have custody towards the one who is seized of that responsibility. It is a two-way street.

From those I talk to who are also in the field, as you are, they tell me that one of the ongoing difficulties that is present in almost every family where there is a breakup is the sense, on the part of the child, that the child had some role to play in the breakup; a sense of guilt that they have done something to bring this about. This particular amendment is geared to trying to address that problem, which, they say, happens in most situations.

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The reason I wanted to have more information on the studies you presented us with was that I can get a better handle on the extent of abuse. My understanding was that in most breakups there is no physical or sexual abuse—until I saw these figures. But this is to address what apparently is there in about 90 per cent of the cases, where the child feels inadequacy and guilt. This is trying to address that.

Ms. Perkins: A lot of the cases where there has been no physical or sexual abuse are not considered custody-and-access disputes in court. They are decided out of court.

Mr. Owen: They can still have their disagreements.

Ms. Perkins: Sure.

Mr. Owen: They do not have to be physically fighting in order to have misunderstandings with each other.

Ms. Perkins: A separation or custody case that has involved abuse very rarely would be settled out of court. They will always be settled in court.

Mr. Owen: The very problem that I have identified, I think, is addressed by this amendment. My question is, is that not worth while?

Ms. Perkins: It sets up an ongoing relationship between each parent to encourage that child's relationship with the other parent. In an abusive relationship, it is just giving more opportunities for further abuse and manipulation of the children, manipulation into the disputes, more pull and push of accusations and blame, and turning children around with notions of mother-blaming, you know, "If it was not for your mother, we would be together" and that sort of thing.

Mr. R. F. Johnston: I have no problem with the statistics that are used. These statistics were all to do with people who had been abused prior to this and what happens after separation. They are statistics which I have seen over the years and these studies are valid studies. I do not really like to question people who come before us in terms of what they are presenting to us. If you have problems with it, I think it would be wise to say so afterwards rather than insulting—

Mr. Owen: I was not questioning or insulting, I was simply—

Mr. R. F. Johnston: It is in Hansard, what you said.

Mr. Owen: I have had more decades of experience in this field—

Mr. Chairman: Mr. Johnston, could you use your time to question the delegation members?

Mr. R. F. Johnston: I just do not like members to insult witnesses.

Thank you very much for a very tough-minded brief, which I think is giving some members some difficulty, but I think it should. I think especially that your comments around post-separation abuse are useful and really need to be thought about by this committee before it addresses the abuse section,



which presumes that all people who suffer abuse are willing to talk about it and therefore go into court in some sort of open fashion or into mediation in some sort of open fashion. It is again missing the point of what happens in abuse.

Your comments about the lack of data are true, and we have raised that ourselves; that no studies seem to have been done before they proceeded with this legislation.

I agree with your concerns for mediation, especially as somebody who has been through mediation as what I would consider an equal partner, but, in retrospect, I really wonder if that was the case or if a lot of other factors did not militate against an even mediation of our dispute.

I think most women's groups are coming before us from a similar perspective as you are. That does present a problem for us as a committee and it does for me personally. Other studies, American studies, have shown that access is a problem and that it is often used punitively in the post-separation period. If we are to try to accommodate your wishes, as you are stating them, we still have this very fundamental problem to deal with of fathers who have never been abusive in their lives but who are feeling left out of the system of rights to their kids.

I wonder if you can tell us what other remedies you see if this is not the remedy. What are the remedies to that situation to allow fathers to participate in their kids' development after separation, either legally within the law or in terms of services that should be available?

That is the thing I found missing from what women's groups have been saying to us at this point. They have been attacking it, rightly, from that very vulnerable part of the population's perspective, but I have not heard any real recognition that there is also an access problem and that something needs to be done around it.

Ms. Perkins: I am speaking on behalf of abused women. That is our experience. That is what we know. I do not feel entirely comfortable going off and then speaking on behalf of other separations and things like that. I do not think I have the experience and information to talk about it.

The experience of abused women is that rarely is access a problem. Getting men to exercise access is a problem. We have a problem with forcing them to exercise access, which we are afraid this duty of the separated parent will do.

I think that there is conflicting evidence. There are some reports that say there is not enough evidence about access being a problem and then some that say there is. Wait until it is more conclusive or until we can come up with something that would respond to the whole issue or the whole picture, to avoid coming up with something that responds to a part of it. That is what we are asking—wait.

Certainly the system is laborious now. Maybe some things could be put in place to make that quicker, like support enforcement, but avoid actually changing legislation based on one part of the population that is affected by it.

Mrs. Cunningham: Well done; a very forceful brief. You speak on behalf of a lot of women in this province, so you should be very proud of yourself.

I have a couple of comments. This bill does talk about enforcing access. It has already been handed down by a judge. So in your situation with the women that you work with or that you advise from time to time, in the settings that you work in, I am confused as to what you really do want to happen, if the access has already been enforced.

Ms. Perkins: Do you mean if access has already been granted?

Mrs. Cunningham: That is what the bill is all about. Can I just go back to a statement that was made on Friday, I think, by a witness, that everyone would have agreed was really knowledgeable. It was the Child Parent Access Task Force, I believe, from Ottawa. They made this statement:

"As courts in this province order access visits more frequently," and that is what is happening, "neutral settings should be available to reduce the stress of visits when parents in conflict cannot agree on access conditions." I am trying to relate this to what is already happening for you. "At the time of determining access or when enforcement of access is needed, judges should not be limited to two options, access or nonaccess, but have a third option of supervised access."

Maybe I am jumping ahead here, but you are stuck with somebody having said this person is going to have access. You are saying at the end of your brief that we need another law that meets the needs of people who have been abused. I think we should be thinking about that, but in the meantime, we have Bill 124. You do not want mediation. Is supervised access something you want?

Ms. Perkins: Yes. We do need more supervised access points, more neutral supervised access points. There are not very many services available in Metropolitan Toronto right now. This would be something that maybe would also relate to what you were saying, that if more dropoff and pickup points were available, it would be very beneficial.

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Mrs. Cunningham: But if the child has the fear that you and I both know exists, what do you see happening before the visit? Just taking them to the door of the most friendly environment without some counselling is not going to help at all. You must have experience there. What do you see happening at this supervised access centre? Who should be there supervising and what should they be doing?

Ms. Perkins: Somebody should be present at all times, a neutral party. The mother and father should not need to have any contact at all. The reason for supervised access would be, of course, to avoid any sort of physical or emotional abuse or harm.

I do not think it could do very much more than that. I think what you are getting at is that the child may need some more counselling if there is a lot of pull and push going on with the father.

Mrs. Cunningham: I think both parents need counselling.

Ms. Perkins: Yes, and the child.

Mrs. Cunningham: I think parents need counselling around how they behave with their children. If they have behaved badly for two whole years and abused them, then they need counselling before they visit them. They need to

be taught something and they need to agree that it is important. I am trying to find out what words you would like us to use as we struggle to find out. You do not like the word "mediation," and given its reputation, I can understand it; maybe "counselling."

Ms. Perkins: I think what we would also like to say is that if one parent is being abusive to the child, rather than suggesting counselling in addition to access, access should be stopped until he stops the abuse, until he gets counselling to stop this behaviour.

Mrs. Cunningham: I can see where you are coming from. The problem we have as a committee is that we are stuck with the decision having been made that somebody gets access, rightly or wrongly, and we are trying to find out if we can fix this bill up just a little bit to meet some of your concerns. We have already heard that you do not like mediation but you certainly like the idea of supervised access. Dropping a child off at the door to visit the parent that you do not think he or she should see, given what you have told us, is not helping us.

We know that the child walking in there just because a judge said he or she should be there is not good enough, but what can we do in this bill to make it different? The judge has already said they are going to be there.

Ms. Perkins: Change some of the portions around denying access. We do not like the list of eight items which say why access can be denied. If that were broadened a little, made not so definitive, some of the language that is used changed a little so that a woman or a custodial parent could deny access without repercussion, deny access for the safety and benefit of the child—

Mrs. Cunningham: I think you did give us some ideas there in your brief, and I appreciate that.

Mr. Chairman: I would like to allow one question from the parliamentary assistant and then go to the next delegation.

Mr. Offer: Thank you very much for your brief. There are actually two things I would like to bring forward. First, as a point of clarification, because I think the point you make with respect to those eight reasons and your concern as to their being conclusive and etched in stone is not the intent of the legislation, the legislation indicates eight reasons, as you rightly point out. But it is not that these are the only eight reasons. They are not to be seen as an exclusive list of reasons. It was hoped that the legislation was worded so that this would be sufficiently clear.

This is the question I would like to ask you. I understand very well your concerns with respect to the amendment, subsection 1(4a). On the other side, in dealing with the reasons, from your experience, do you not feel that there is some protection given to the custodial parent who feels that there is abuse, physical or otherwise, in denying access through those first two reasons, which deal directly with violence? I will just bring them out. They read: "The responding party believed on reasonable grounds that the child might suffer physical or emotional harm if the right of access were exercised" and "The responding party believed on reasonable grounds that he or she might suffer physical harm if the right of access were exercised." I would like to get from your experience whether that might provide some sort of balance.

Ms. Perkins: We do not think it is adequate protection. For one



thing, the oral evidence and the speedy hearing sort of get things going too quickly. When a woman has to prove "on reasonable grounds" with oral evidence in 10 days, there is not anything in this bill to acknowledge the difficulty in proving reasonable grounds. What happens? She says, "He was intoxicated," and he says, "I wasn't." There is nothing in here to allow for that. Then it turns into a dispute and goes to mediation or whatever.

Mr. Offer: I know I have only a few minutes to ask questions, but I would not mind carrying on with that for a moment, because I think an extremely important point is what in fact happens now and what we are attempting to do through this legislation.

Again, the eight reasons are not an exclusive list, because the point that you bring out is well taken. The legislation is not meant to be an all-exclusive list. To give the right to the custodial parent to say "No, because I feel that I or my child is going to be abused" is what is in this legislation currently before this committee.

Ms. Perkins: So can she go in front of a court and just say, "I feel we were going to be hurt"? Then what happens? There is nothing to acknowledge the difficulty of her doing that. What are reasonable grounds? How does she prove it? What are his reasonable grounds? There is not anything in here to acknowledge that difficulty.

Mr. Chairman: I think we had better draw this to a close. You have had in excess of the 30 minutes. It has been a very good exchange and you have been very helpful in the comments you have made to our committee. I think it is time to move on to our next delegation. I thank you for coming before us.

We now have the Interval House, Toronto. Representing them is Susan Goodfellow.

Ms. Goodfellow: This is Mary Preston, who is also from Interval House.

Mr. Chairman: Susan, I understand that you understand that you have 15 minutes. With the consent of the committee, we may show some tolerance to that, because you are not here as an individual but as an organization. We will see how we get along.

You heard my instructions to previous presenters. You may divide your time between presentation and questions and you should try to avoid any personal matter which may be before the courts or appear before the courts. Proceed.

#### INTERVAL HOUSE, TORONTO

Ms. Goodfellow: I have just handed out the brief, so I think what I will do is also read it.

We represent Interval House, Toronto, the oldest shelter for battered women and children in Canada. For over 16 years our agency has provided support, counselling and practical assistance to approximately 1,800 women and their children who have found themselves victims of violence, usually perpetrated by the male heads of their families. We are called upon to assist women and children before they leave these violent relationships, during their stay at our shelter and often for years after they have relocated to their new homes.

It is unfortunately a commonplace occurrence that battering men continue to harass, physically threaten, intimidate and even assault their ex-partners and their children long after their separation or divorce. As a result of the work we do at Interval House, Toronto, we have great concern about issues such as access to children, forced mediation and joint custody. Obviously, today we are here to consider access enforcement as it is described in Bill 124.

The most serious criticism we at Interval House, Toronto, have regarding Bill 124 is the underlying philosophy that is specifically delineated in subsection 20(4a), identified as "Duty of separated parents." In relationships where there is mutual trust, respect and maturity, it would be a reasonable expectation that each person would encourage a relationship between the children and the estranged partner. However, we represent women who have been victims of violence from their partners. There is no mutual trust or respect. In fact, the women we serve have good reason to doubt the dependability and conscientiousness of men who have assaulted them and often their children.

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We are alarmed that under this new law it would be the legal duty of an assaulted woman to encourage a relationship between her children and her abuser. We have grave concern for children who have seen their fathers behaving in violent ways to their mothers. Contemporary researchers in this field, such as Peter Jaffe of London Family Court Clinic and a member of the London district Custody and Access Project, regard witnessing wife assault as a form of child abuse.

Men who batter women severely injure their children by exposure alone. Children who see their mothers being assaulted exhibit the same behaviours as children who have been assaulted themselves. We question whether it is ever in the best interests of the child to encourage a relationship with a man who uses manipulation, intimidation and/or violence to maintain control and resolve conflict.

Let me cite an example from our experience at Interval House, Toronto. Maria's husband was very violent. He had assaulted her for four years before their three boys were born and continued afterwards. He had pushed her, broken her arm, bruised her, choked her, threatened her life and terrorized her, all on a continual basis. He had dangled one child over the balcony by the leg, threatening to drop him if his wife did not do what he wanted. Neither Maria nor her husband were fluent in English.

Maria finally escaped from him with her children and stayed in our shelter. She was awarded custody, but the court ordered her to give her husband supervised access at the Lakeshore Area Multi-Service Project. The supervisor did not speak their language and so did not understand that her husband consistently told the boys during visits that their mother was a slut, a whore and responsible for breaking up the family.

Over the years he has continued to have access to the boys who, as a result, have become more and more out of control, abusive to their mother and have developed problematic behaviour outside the home, including drug abuse and participation in petty crime.

This is the question we put to you: Was having access to their father in the best interest of Maria's boys? We strongly believe it was not.

You should understand that in the examples used here the identities are protected.

If Bill 124 was enacted with subsection 20(4a) as proposed, then women who fear for their child's safety but are unable to produce evidence which the courts would find substantial, will feel pressured into allowing access. To deny access will cause these mothers to fear future loss of custody. They will feel forced to allow a situation of possible danger to their child unless they can prove they have good cause to be fearful.

Here is another story that is relevant to this issue. Anna was an immigrant woman with three girls. Her husband assaulted her many times over the years. His family back home was involved with prostitution. She was afraid he would try to abduct the girls and take them back home. She did not want to give him access. She could not substantiate her fears sufficiently to be believed by the court. As a result, he was granted court-ordered, supervised access through a reputable social service agency.

Some months later, the worker who was responsible for the supervision of these access visits went on holiday and, as a result of too large a case load, neglected to ensure that another staff person would replace her. The girls were dropped off as usual for their supervised access visit and were never seen again by their mother. Anna had never wanted to grant access but had felt too afraid of the legal consequences of denying access.

This situation happened a number of years ago under the law as it currently stands. Anna did not need a new law to encourage her not to deny access. If anything, she needed encouragement to be assertive in denying the right of this violent man to hurt her children.

With this and the previous example from our work, we want to be clear that we are very supportive of supervised access centres. The problems with these centres are related to lack of funding. We need more centres which are properly resourced to meet this growing need.

Let me now speak to subsection 24(3), which orders the courts to consider the issue of domestic violence when assessing the reasonableness of a request for access. We are pleased with the inclusion of such a clause. However, we wonder how the woman will prove there has been violence and whose testimony and experience the court will believe.

We are concerned about the gender-neutral language used here and in fact throughout the wording of the bill. Women's perceptions and descriptions of their lives have not generally been respected and believed in courts of law. The vast majority of domestic violence we see is really male violence against women and children. If this violence is to be addressed accurately, then women's perceptions of this violence will have to be respected in courts. We have seen little evidence of this.

To illustrate this lack of respect for women's perceptions, I want to bring your attention to another woman's life story.

Jane's husband was a convicted rapist. He had been very violent towards her and had broken her arm and her leg in past assaults. She had three boys. After fleeing from him, she was ordered by the court to give him unsupervised access despite her pleas for protection for her children. The children were very frightened of him and before each visit they would refuse to go. Each time they fought with their mother until she forced them to visit their father. He physically abused the boys during these visits.

After four years of abusive visits and many court appearances where she



consistently tried to convince the judge to deny her husband access privileges, she finally was awarded custody with no access. The boys, with Jane's help, are now trying to heal from the psychological scars of this abuse.

If Jane's perceptions of her experience had been respected by the courts, her children would have been spared four years of violence and the ensuing trauma from this violence that lasts for years.

I will now address what constitutes wrongful denial of access, namely subsection 35a(4).

Our experience of women's perceptions being dismissed or denied by the court causes us to be concerned with this section. All eight of these reasons to deny access sound very clear and convincing. However, if the courts are not in the habit of believing a woman's experience of violence in her home, then how will she convince the judge that she has reasonable grounds to deny the father access to the children? Our experience is that the courts do not listen with equal weight to men's and women's experiences. As a result, we are fearful that this law will be used against women who are trying to defend themselves and their children from violence.

Let us examine paragraph 35a(4)2, for example, which states, "The responding party believed on reasonable grounds that he or she might suffer physical harm if the right of access were exercised." Many battering men use their children to exercise power and revenge over their wives, even after separation. Until some violent incident occurs, such fear would be hard to substantiate in court.

Such was the case for Sue. Sue's husband battered her continuously, but not the children. She could not provide any reason acceptable by the court to legitimate denial of access, even though she was deeply afraid of allowing him access. During the first few visits, he entertained the children well and bought them favourite toys and clothes. He pressured them into giving him Sue's new address, as well as much incidental information about her life. He went to Sue's new home and harassed and assaulted her. She, on a limited low income, was forced to move again and attain new restraining orders, etc.

It is quite likely that under this new law Sue would have difficulty proving why she was afraid she might suffer physical harm if rights of access were exercised, and yet her story shows how her fears were indeed legitimate.

Let me bring your attention now to subsection 35a(9), which states that a motion concerning access will be determined on the basis of oral evidence only.

Women who have been victims of violence by their male partners usually have experienced a great deal of intimidation and fear as part of this violence. This intimidation and fear does not disappear after separation. In fact, emotional abuse and threats of death often continue long after the relationship has dissolved. Often the organization of the children's visits with the father provides an opportunity for further emotional abuse of the mother.

In this section we are concerned that the courts do not realize how traumatic it is for an assaulted woman to speak in the same room against her assaulter in defence of her children. This is the same concern we have with forced mediation. Again, there is an assumption that men and women who provide such evidence orally have equal power. Assaulted women, by the very nature of

the assault, do not have equal power or the same level of confidence as abusive men.

The woman usually feels intimidated, frightened and upset by the man's presence. To expect her to speak on her own behalf, without the assistance of a lawyer and without written affidavits, is not recognizing the violence she has suffered. We also expect, based on our past experience of watching women speak in court, that the man's evidence will be heard and believed more readily than the woman's. Sarah's case exemplifies this point.

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Sarah's husband was abusive to her and sexually abusive to their two daughters. He was a professional man who presented himself well in court. Sarah and the girls told the court of the child sexual abuse he had perpetrated. He said he did not need counselling but promised to the court he would never do this again. The court did not realize that, in most cases, sexual abuse does not stop, even when the offender promises to change. So Sarah's husband was granted access and then, later, custody of the girls. Two years later, the eldest daughter told Sarah and their doctor that her father had continued to sexually assault her.

Sarah went back to court, and this time she was awarded custody with no access. It was clear that the girls would not have been sexually abused again by their father if they and their mother had been believed in court, and not their father.

I would like to point out that although these situations that I have described sound extreme and therefore out of the ordinary, our experience is that this kind of violence is more common than most of us would like to admit. Severe acts of cruelty are not rare or isolated among the population of abusive men.

After serious consideration of Bill 124, we at Interval House, Toronto, do not believe that this bill is necessary. Most women, even after experiencing abuse, want their children to have some contact with their father. When assaulted women do wish to deny access, their experience should be taken seriously and their reasons should be considered to be substantial.

We wish to see the law give more protection to women and children who are victims of assault. This bill seems to us to give more penalties to the person who denies access rather than more protection to women and children who are legitimately afraid of more violence.

Although there has been an attempt to include some useful ideas, such as the violence clause, the bill as a whole will likely do more harm than good to battered women. The law, as it stands now, provides the necessary tools to enforce access. We have seen no evidence to support the need for this bill.

Mr. Chairman: Thank you very much for your thoughtful and well-presented comments. I suggest to the committee that we allow this delegation a full half-hour, if necessary, so that we can ask some questions. That would take us to 12:15 p.m.

Mrs. Cunningham: Thank you for a wonderful brief. When you say you want more protection for women and children, are you just saying then that Bill 124 is totally unnecessary, that there are no parts of it that you would support?

Ms. Goodfellow: As I said in the brief, the clause to consider domestic violence is important as a statement. Within the bill, however, we cannot see how this would be necessarily helpful to assaulted women, because of the "reasonable grounds" condition as part of their having to defend their denials of access.

I cannot give you statistics, but it is consistent with our experience of going to court with the women. Almost all the time, women's experiences are not respected in court. For her to have to prove reasonable grounds, it is highly unlikely her reasons will be considered equally with his reasons. That is the only part that sounds like it could be of any use to us, yet the way it is phrased is not.

With the law the way it stands now, we have not seen any reason to need this bill. This is not a need we see at all.

Mrs. Cunningham: You are not the first one who has told me this, of course. Could I ask another question. To be rather practical, this bill deals with fathers who already have access under circumstances you would not agree with.

Ms. Goodfellow: Yes.

Mrs. Cunningham: What you would like to see is—well, I do not know what you would like to see. You would probably prefer that they not have access, but not have access for ever? Do you see something happening in these abusive situations where the children at some time in the future could be reconciled in some way?

Ms. Goodfellow: I think that if we are talking about an abusive situation, it should be mandatory for the father to have some kind of counselling around his violence before he enters into any kind of relationship with the child in access.

Mr. Owen: I gather the judges do not want to deprive the child of seeing the parent in that situation, yet you are telling us that time and again there is no change in the behaviour of the father.

Ms. Goodfellow: That is right.

Mr. Owen: Do you have any statistics to show whether treatment or any counselling has ever changed the situation? If it does not, have we any way of educating the judges that it just is not working?

Ms. Goodfellow: So few abusive men go after counselling. As far as I know, there have not been any kind of statistics. I assume Peter Jaffe is going to make a presentation here. He may in fact have some kind of statistics from the London Family Court Clinic, but as far as we know, in our experience, almost no abusive men ever go after any type of counselling.

Ms. Preston: They do not feel they have any problem that needs counselling.

Mr. Owen: The reason I asked was that I recall there was a study in the United States and I thought it indicated that something like 95 per cent of abusive parents do not change, something as high as that. I was just wondering if you had that information.



Ms. Goodfellow: I do not know that statistic, but it does not sound surprising to me.

Ms. Poole: I would very much like to thank you for bringing these very moving examples to us. I think it highlighted very well for committee members the problems you are trying to illustrate.

I noticed that there were several examples—Jane and Sarah, I think—where they went to court and tried to fight an access order, were unsuccessful, the husbands did get access, and through a series of terrible events—there was further abuse—finally both Jane and Sarah did get the courts to reverse their stand and deny access.

Have you noticed over the last five or six years any change in the courts in how they are dealing with abuse and domestic violence? I know you probably do not have statistics on it, but from just your own experiences, subjective though they may be, are you noticing a change in the courts' attitudes?

Ms. Goodfellow: It is hard to say. With individual judges sometimes you can see that attitudes have changed, but a lot of the judges have been there a long time and have not had the education they need to address some of these issues.

Two years ago, I was in court with a woman who started to describe her situation and the judge looked at her and said: "Oh, incest, incest. Here's another woman crying incest." That is the kind of attitude you have in our courts still today for the most part.

Ms. Poole: My final question relates to the whole issue of whether this bill is necessary. I know that several groups, particularly those representing abused women, have said, "We don't need this bill." However, there are indications from a number of other sources that there are many parents, not only male but also female parents, who are being denied access for what appear not to be reasonable grounds. To go back to Mr. Johnston's question of our previous delegation, do you have any positive suggestions on how we could deal with that problem in perhaps a different way?

1210

Ms. Goodfellow: No, I do not, but I think that from what we can see—I have some sympathy for people who feel that with the law the way it stands now, they cannot get their access decisions faster in the courts, that they are held up for three to six months. It is difficult for me to feel too sympathetic knowing that under the law the way it is now, women can go after a court order, or at least support payments, the new process of going and getting the money back, and that often takes 18 months. The concern that the backup is three to six months is not a very long backup in our experience. Our women have to wait an awful lot longer than that to get some money to be able to continue to live.

Again, from our experience and from the statistics we know have been taken, the issue of denial of access is not a major problem. For some few people it is, and it is unfortunate, but to change the whole legislation because of the few—it is up to you to decide, but it does not seem that this is very helpful when the minimal figures we have now, and I would think they are extremely conservative, are that one out of 10 marriages involves violence. That is an awful lot.

If this is going to be a detriment to that number of people when in fact so few are restricted for access, it does not seem to us that makes any sense at all. The law as it stands now is adequate.

Mr. Daigeler: Certainly, your brief is very well laid out and makes a very good case. At the same time, I must say that I have some great difficulty with your difficulty and also the previous presenter's difficulty with the fact that this bill states that in the best interests of the child, there should be a continuing parent-child relationship with both parents in cases—I think this is very important—where access has in fact been granted by the court. We must not forget that we are dealing here with cases where a court has already decided that it is in the best interests of the child to have access to both parents.

You are saying that, unfortunately, courts are making the wrong decisions regarding access and are not taking sufficiently into account violent situations women have experienced.

However, would you not agree that in our type of society there must be an equal concern for due process? In our society, a judge is the highest interpretative authority, although obviously he or she can make an error as well. Nevertheless, in our society that is the institution we go to. If they decide that it is in the best interests of the child to have access and that the allegation of violence cannot reasonably be proven, then is it not fair to say that the violence has not occurred?

If there is a problem with judges making wrong decisions, I think that is what we would have to address then, but once the access has been granted, I think it is reasonable to do the best we can so that the parent-child relationship can be enforced or can be encouraged for both parties.

Ms. Goodfellow: My understanding of the way our system operates is that the courts follow the direction of legislation. If the legislation has in it an underlying philosophy that says it is always in the best interests of the child to—

Mr. Daigeler: That is not what it is saying.

Ms. Goodfellow: Yes, it is, except when there are reasonable grounds about violence. What we say is that women's experience is not being respected. It is very hard to prove reasonable grounds on most issues of violence. Unless a woman walks in with obvious bruises, it is a very difficult thing to prove whether there is violence, whether there is intimidation, whether there is emotional abuse. If this is saying that basically for the norm, the average, it is an underlying philosophy, then it is going to mean the women who do say that this is not okay and that the access is not okay will look like they are unco-operative instead of protecting their child.

That is not necessary. If that is not in legislation, then the court is more likely to see each individual relationship and each individual situation. We think people should be taken in their individual situations rather than in a blanket thing. Otherwise, abused women will get hidden and not be able to defend themselves.

Mr. Chairman: The half-hour has expired. I thank you for coming before us.

Mr. R. F. Johnston: I think it would be appropriate if you allowed

me to ask my question, Mr. Chairman. It is nice to have several government members ask questions, but—

Mr. Chairman: I was not intending to cut you off. I was not sure whether or not I saw your hand, Richard.

Mr. R. F. Johnston: Three times I nodded back to you. I thought that was enough, but if it is not, I am sorry.

Mr. Chairman: Carry on.

Mr. R. F. Johnston: One question.

Mr. Chairman: Have your question.

Mr. R. F. Johnston: Thank you for your brief, which I appreciated a great deal. I, too, am starting to have some serious problems with subsection 20(4a), both with the way it is drafted and where it is placed in terms of the bill, and I think maybe it does contradict some of the changes to section 24 that are being proposed. We will get into that in clause-by-clause.

You did not raise the issue of clause 24(2)(c), which is "the length of time the child has lived in a stable home environment," which the group prior to you did raise. There have been recent court cases on it. The issue I want to raise is that this in fact is an issue now. That is not a new amendment to the act. That is part of the present act, as is clause (g), "the permanence and stability of the family unit with which the child will live." Do you want us to delete, retain or amend those sections in some fashion?

Ms. Goodfellow: That is a problem to us, obviously. If women come to a shelter because they flee violence, then according to the law as it is written there, that would be considered unstable, and because he is in his home, because he is more intimidating and violent, then he looks more stable. That is not okay. Yes, we want that deleted, the whole thing. Yes, that is a problem, and that is a problem in the law the way it stands now.

Mr. R. F. Johnston: Exactly.

Ms. Goodfellow: Definitely.

Mr. Chairman: Thank you very much for your presentation, for taking the time to do the research, come before us and assist us with our deliberations.

Before the members leave, we are meeting in room 228 this afternoon. Another committee requires this room because it requires the simultaneous translation. I ask you to take your papers with you. Please be there promptly at 1:30. We have a full afternoon of hearings.

The committee recessed at 12:18 p.m.



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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHILDREN'S LAW REFORM AMENDMENT ACT

MONDAY, APRIL 10, 1989

Afternoon Sitting



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Neumann, David E. (Brantford L)  
VICE-CHAIRMAN: O'Neill, Yvonne (Ottawa-Rideau L)  
Allen, Richard (Hamilton West NDP)  
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Cunningham, Dianne E. (London North PC)  
Daigeler, Hans (Nepean L)  
Jackson, Cameron (Burlington South PC)  
Johnston, Richard F. (Scarborough West NDP)  
Owen, Bruce (Simcoe Centre L)  
Poole, Dianne (Eglinton L)

Substitutions:

Farnan, Michael (Cambridge NDP) for Mr. Allen  
Offer, Steven (Mississauga North L) for Mr. Beer

Clerk: Decker, Todd

Staff:

Swift, Susan, Research Officer, Legislative Research Service

Witnesses:

From Canadian Second Partners for Action:  
Coutinho, Marion, Secretary  
Verkley, Frank

Individual Presentations:  
Bregman, Barry W.

Milota, Mary  
Leeson, Elizabeth

From the Ad Hoc Woman Lawyers Committee:  
Curtis, Carole  
Waldman, Geraldine  
Murray, Ellen

Individual Presentation:  
McIntyre, Don

From the National Association of Women and the Law:  
Tellier, Nicole  
Parrack, Judy  
Geller, Robin

From the Ministry of the Attorney General:  
Cochrane, Michael, Counsel, Policy Development Division

From the Supervised Access Action Group:  
Newman, Judy, Chairperson  
Rawson, Carol, Director-Designate, Metro Parent-Child Meeting Place

From Mothers Without Custody:  
Fetherston, Carol, Co-ordinator

Individual Presentation:  
Hutcheon, Mary

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Monday, April 10, 1989

The committee resumed at 1:32 p.m. in room 228.

CHILDREN'S LAW REFORM AMENDMENT ACT  
(continued)

Consideration of Bill 124, An Act to amend the Children's Law Reform Act.

Mr. Chairman: The committee will come to order, please. Ladies and gentlemen, members of the committee, the standing committee on social development is convened to hear presentations regarding Bill 124, An Act to amend the Children's Law Reform Act. We have a full afternoon of presentations, so I would like to start as soon as possible.

Our first organization will be Canadian Second Partners for Action, and representing Canspact we have Marion Coutinho. Would you take a chair here? Is this Frank Verkley?

Mr. Verkley: Yes.

Mr. Chairman: You have one half-hour for your presentation. You may divide the time as you see fit, between presentation and questions from committee members. I would caution you before you begin that you are in a public forum and that you should refrain from making reference to private matters, disputes which may be before the courts or could appear before the courts in making your presentation. You may proceed.

CANADIAN SECOND PARTNERS FOR ACTION

Mr. Verkley: I would like to introduce myself. My name is Frank Verkley and I am from Kerwood, which is halfway between London and Sarnia.

Mrs. Coutinho: I am Marion Coutinho, from London, Ontario.

Mr. Verkley: I would like to thank the committee for the opportunity to present our concerns about Bill 124, An Act to amend the Children's Law Reform Act. Many of our members are very anxious to be a part of this process, but all of us have commitments to work and family that simply do not allow us to make our individual presentations to your committee.

We have travelled from the London and Sarnia area this day to represent these people who very much care about our children and how this bill and legislation will affect their lives and ours. I have personally let my business responsibilities go for this day to be here. I would like now to have Marion describe what Canspact is and what its goals are.

Mrs. Coutinho: As I said, I am Marion Coutinho from London, Ontario, and I came down today to introduce you to Canspact or Canadian Second Partners for Action. Originally our membership consisted only of second partners, but we soon found that many others were coming who shared the same concerns that we do, and today we represent every member of family life: mothers, fathers, grandparents, step-parents and other family members. We have one thing in common: we all live within the framework of the Family Law Act and the



## Children's Law Reform Act.

As you listen to our presentation, please keep in mind that we are speaking from experience and that we represent the older generation as well as the younger generation. Some of us are drawing on experiences of 20 years. We find that even though we are a diverse group, we share the same problems. For example, we have some members who are mothers without custody and we find that these mothers without custody have the same problems as do the fathers without custody.

We believe that children have the right to share in the lives of both parents, both sets of grandparents and other family members. We would like to see fewer children raised knowing only one parent and that parent's family. We believe it is possible to be fair to all parties of a divorce and provide a stable environment for the children. Now we would like to make our presentation.

Mr. Verkley: The act reads, in subsection 31(10): "The court may relieve a party from responsibility for payment of any of the fees and expenses of the mediator where the court is satisfied that payment would cause serious financial hardship to the party."

Bill 124 is suggesting the following amendment, "The court may require one party to pay all the mediator's fees and expenses if the court is satisfied that payment would cause the other party or parties serious financial hardship."

Canspact's proposal is that the act should stay as written in subsection 31(10), no change required. Canspact's reasoning is:

1. The intent of the change recommended in Bill 124 is already covered in the existing act, subsection 31(9), "The court shall specify in the order the proportions of amounts of the fees and expenses that the court requires each party to pay." One could interpret from this that either party could be required to pay 100 per cent of all fees and expenses if the court is satisfied that payment would cause the other party or parties serious financial hardship.

2. The removal of subsection 31(10) from the act, as it is currently written, would indicate the mediation services would not be available to those parties who financially cannot afford the service. Separation and divorce, as everyone is aware, usually cause tremendous financial difficulties for both parties. With the intent of the act being to make decisions on custody and access with the best interests of the children in mind, mediation should not be denied to those who cannot afford it. The cost to society of a mediator's fee and expenses would be far less than legal aid and court costs if the parties' differences could be handled through mediation. The cost to the mental health of the children who are the victims of custody and access disputes would be far less if the parties could resolve their differences through mediation instead of through the adversarial process.

Subsection 35a(3) of the proposed Bill 124 suggests the following amendment, "A period of compensatory access shall not be longer than the period of access that was wrongfully denied." Canspact's proposal is, "A period of compensatory access shall be as long or longer than the period of access that was wrongfully denied."

Our reasoning is if all separating and divorcing parents were reasonable

about custody and access matters, then there would be no need for an access enforcement bill or amendment to the act. Unfortunately, some separating and divorcing parents become so embittered in the adversarial process that their children are used as weapons in their battle. Denial of access is the most common tactic used in getting even with the ex-spouse. Bill 124 has been written for these unreasonable custodial parents.

We feel that continued legal action to enforce access rights will directly hurt the children of the marriage, as both parents will incur legal fees and court costs which will deprive the children of needed food, clothing, shelter, future educational opportunities, etc. Although financial penalties should be in the act, they should be used as a final resort to deter access abuse. The custodial parent will be less likely to violate an access agreement or order if the penalty for doing so will be increased access time to the noncustodial parent.

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In subsection 35a(4) of the proposed bill the following amendment is suggested—I do not think I need to read all these through because I believe you have all read them before—the eight paragraphs on wrongful denial of access—so I will just go with CANSPACT's proposal:

A denial of access is wrongful unless the responding party believed on reasonable grounds that the moving party was impaired by alcohol or a drug at the time of access.

The return of the child to the custodial parent is wrongful where the noncustodial parent believes on reasonable grounds that the custodial parent was impaired by alcohol or a drug at the time the child was to return.

CANSPACT's reasoning is:

This bill has been written because it is necessary to enforce access in some situations where the custodial parent is unreasonable, unco-operative or hostile to the noncustodial parent and interferes with the right of the noncustodial parent's access to his or her children.

In this section, Bill 124, instead of enforcing access for the noncustodial parent by legal action or through an independent agency, is giving the unco-operative parent a list of excuses that he or she can use to continue abusing the noncustodial parent's access rights. In these situations, the custodial parent does not even have to prove any of the circumstances to be factual. All he or she has to do is make the accusation that they have occurred. Under no circumstances should the unco-operative custodial parent be the judge and jury in determining whether access is denied or not.

We would like to do some reasoning, item by item, as listed above.

1. The custodial parent knows exactly what button to push to create a situation that will anger the noncustodial parent enough to make the accusation that the child might suffer physical or emotional harm if the access were exercised.

2. This is the same as above.

3. Impairment by alcohol or drug is grounds for denial of access and grounds for failure to leave the child with the custodial parent when the

child should have been returned. In both cases, the onus is on the parent accused of being impaired to seek immediate proof of innocence if he or she feels wrongfully accused, either by a doctor's certificate or a police breathalyser/blood test. False accusations should be cause to prohibit further motions of the offender without leave from the court.

4. Travel difficulties, employment obligations, unusual circumstances, etc. could affect a noncustodial parent's ability to pick up his or her child on time. Times for access, whether determined in a separation agreement or by court order, in many cases are chosen by the custodial parent with full knowledge that the noncustodial parent will not be able to exercise his or her access because of any of the above reasons.

Orders for access are often determined in 10 to 15 minutes in motions court via an interim order that stays in place for two, three or four years before the matter is settled or goes to trial. These orders, although supposed to be short-term solutions, usually establish the status quo and are seldom changed in the final settlement. Variations to interim orders and final court orders are very difficult and expensive to achieve.

Due to the one-sided initiation of the access agreement and the difficulty and expense to change same, lack of adherence to this time limit to exercise access should never be an excuse for denial of access. If it is determined that the noncustodial parent could reasonably be expected to pick up his or her children at the specified time and does not, then the access agreement/order should be modified to times more suitable to both the children and the noncustodial parent.

5. Unless a doctor's certificate is presented stating that the child should not be moved due to illness, there is no reason the child cannot be cared for by the noncustodial parent. Our example is that if the child has a fever of 104 degrees and you call the doctor, the doctor tells you to bring the child to the office. Doctors do not make house calls any more. So if the child is well enough to go to the doctor's office, in most circumstances he is well enough to go to the noncustodial parent's residence for equally good medical and emotional care because we are both parents. We have two sets of parents here; we both love our children.

6. Correct the written conditions concerning access that were agreed to by the parties or that form part of the order for access, but do not deny the children their right to the love and attention of the noncustodial parent, nor deny the noncustodial parent his or her right to the love and attention of the children. As stated in 5 above, circumstances may have changed since the original agreement or order. The agreement may have been unfair intentionally, intended for only a short time. It may be difficult to vary or too expensive for one party or both parties to vary, etc. In any case, the continuation of the relationship between the children and the noncustodial parent is much too important to be denied.

7. The noncustodial parent is entitled to state reasons for his or her failure to give reasonable notice and excuse to exercise the right of access to a court of law or enforcement agency. The custodial parent should never be judge and jury.

8. This situation is one parent's word against the other's and should not be grounds for denial of access unless the occurrence of the conversation can be proven beyond a reasonable doubt.



Subsection 35a(7) of the proposed Bill 124 is recommending the following amendment, "(7) A motion under subsection 1 or 5 shall be heard within 10 days after it has been served."

CANSPACT's proposal is this: "A motion under subsection 1 or 5 shall be heard within three days after it has been served."

CANSPACT's reasoning is:

Denial of access needs immediate rectification. A noncustodial parent travelling from a great distance will have incurred expenses to exercise his or her access. The time period allotted to his or her access could be over or almost over by the time 10 days has passed. Vacation plans may have been made and paid for and be nonrefundable. Employers may not give the noncustodial parent the flexibility to reschedule a vacation, even if makeup time is ordered by the court.

Custodial parents wrongfully denying access to the noncustodial parent should become aware that they are going to have to be accountable for their actions almost immediately and that they have little hope of getting away with the abuse again.

In our notes to the standing committee, we would like to say that:

1. Denial of access to the noncustodial parent who is also a loving and caring parent, or he or she would not be seeking access, is extremely cruel. It usually is a warped way to avenge some perceived or real hurt following the separation or divorce. But the real victims are the children of two warring parents. They are the bullets in the guns used by one or both parties. The intent of Bill 124 should be to protect the noncustodial parent's rights to access of his or her children, but it should also guarantee the children their rights to continued love and attention from the noncustodial parent.

Other than in situations where there is violence or sexual abuse, denial of access to the noncustodial parent is the worst form of child abuse there is.

2. Bill 124 is virtually unenforceable in its present state. The courts of Ontario are not likely to change their policy regarding fining or jailing custodial parents for violations of access agreements or orders. The custodial parent is usually the mother, and the courts are reluctant to imprison the mothers of children. They are also reluctant to fine single mothers, knowing full well that a fine would put them in even worse financial difficulties than they are already in due to the separation or divorce. Even if they did fine the offending custodial parent, it is unlikely that they would enforce the collection of these fines.

3. Many noncustodial parents will not be able to take advantage of an access enforcement law because they cannot afford to retain a lawyer to pursue the matter in the legal system. It might be a better solution to use a system such as the director for custody and support enforcement, which has had tremendous success without generally involving the legal system in collecting support payments due to ex-spouses and custodial parents. Perhaps the agency could perform both enforcement procedures and be changed to the director for court order enforcement. No one wants support money withheld from his children, but if it was to go into a trust account during a wrongful denial of access inquiry, wrongful denial of access would disappear overnight.

4. It is not in the best interests of the children involved to have both

parents incurring horrendous legal fees and debt. No parent wants to put his lawyer's children through university or college. Battles in the courtroom cost money. The children's standard of living, quality of food, clothing, shelter and education all diminish with every minute spent in court paying lawyers' fees and court costs.

5. There are alternatives to custody and access battles. The need for access enforcement legislation disappears when there are two custodial parents whose only difference is the time periods that they have care and control of the children. The fight is taken out of the children's court. Even with two parents who cannot communicate at all, the most recent human science studies indicate that the children are better off in that environment of shared parenting than in the older, single-parent custody arrangements.

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All the assessment organizations that the courts use recognize this fact, which you can tell just from their suggested reading lists, which we have in exhibit A. The family courts of Ontario and other provinces of Canada are also recognizing these facts. The research faculty memorandum on joint custody from the Law Society of Upper Canada has 33 pages of case law, primarily backing up court orders for joint custody or shared parenting. Many of these were contested at some time during the legal process.

The human sciences already indicate clearly that it is in the best interests of the children to make sure that the children continue to enjoy the nurturance of both of their parents. The legal system has started to recognize this as well. The Children's Law Reform Act should include children's rights to be able to continue to love both parents after separation or divorce. They should be guaranteed they will not be the victims of their parents' disputes, nor should they be the pawns, informants or any other article in the division of the spoils of marriage breakup. In shared-parenting arrangements, everyone wins; no one, in particular the children, loses.

I would like to finish with some personal comments that I have. It has been three years since my marriage separation and during that time I have been associated with our group of Canspact and also for two and a half years as part of the London Catholic separated and divorced group, which is a nonaction group, one that deals as a personal support group to help people along in the process of getting on with their lives.

It has been my observation that children love both parents. The parents in the separation process have a great difficulty seeing the difference between the parent-to-parent interactions and reactions versus the child-to-parent interaction. The children just do not seem to relate or understand it on the level of ex-spouse to ex-spouse.

Both parents in the start of separation generally feel the other to be the biggest threat to themselves personally and to their children. After the gamut of courts, lawyers, tears, money costs, debts and emotional roller-coaster ups and downs, each still has unique and all-important aspects to give to each child as mother and father.

The present system allows for so much embittered interaction, such as the accusations hurled in motions courts for parents fighting to establish some form of regular access to their own children. In the end, as these children grow to teen years and up, they show where they want to live. Then they finally have a chance to go where the true love really is. Too often, it

is not with either parent and this child has the scars to live with and deal with, but during all these growing-up years, if just one parent is a loving and responsible parent, the children will be able to thrive from that association and develop. That is why it is so important that the access to both parents be enshrined in the law. What can be more important than the next generation that we all have produced?

Thank you for giving me the opportunity to give my presentation.

Mr. Chairman: Thank you for your presentation. You have left seven or eight minutes for questions and we have two members who have indicated an interest.

Mr. R. F. Johnston: Thank you for the presentation. I have had some difficulties with the listings on section 35a as well, imagining the realities that a lot of people have to deal with out there. I found it ironically amusing what you placed in number 5 in the sense that, although I do not think it fits there because we are talking about access rather than the fitness of a custodial parent to stay a custodial parent, which is what I think you are dealing with there when you are talking about the impairment and drug abuse by the custodial parent, I think it does show where the onus of proof is being laid and the presumptions on the noncustodial parent that are listed in the denial of access. I found that neatly done, even though I do not think that would be an appropriate amendment at that point. That might be something we would talk about later on in terms of how one reopens the whole custody concern around issues like that, which I am not that aware of.

It is the tone that comes through this which I find disappointing and I want to get your response to it. Although I understand the frustrations that you are coming from here, there seems to be a desire for some punishment to be laid into this access matter, some of the language about the custodial parent being able to press the right buttons to punish the noncustodial parent, and then to say that you want the period of compensatory access to be longer than the period that was denied, it seems to me to be adding in a sort of an upping the ante of punishment there, and then your comments about the legal system---

Mr. Verkley: May I interrupt?

Mr. R. F. Johnston: I just wanted to put the two things together: The notion that that might be longer than the actual period for which access was denied and link that to your comments about the court system still not going to be likely to punish the custodial parent in terms of fines or imprisonment at the same time as you say you do not want any debts accrued to both sides through the lawyers. I found that a little difficult to understand and I wanted to hear from you about why there is that kind of emphasis that reads through your report.

Mr. Verkley: I find the way you phrased that interesting. You said there should not be any of this adversarial situation, but what you did not say when you said that was that the children missed out on spending that specific time with the other parent. If that is not going to be made up or made up extra, whatever, then you are really depriving the children of the access they are entitled to, because that is their other parent.

I thought in our presentation that we had some rather practical things we can do, because we understand the situations. We understand the law and we understand the situations of the custodial parent having no money and the circumstances they are in. But if you could, as in the examples we used, use



some practical means of saying, "There is no way we're going to let you get away with it, because you're unhappy and angry with your spouse," you would take the ammunition away from the custodial parent who chooses to use the children by denying access when there really is no valid reason for it.

The children are the ones who are always the losers in this thing. We are not promoting an adversarial system. We want to take that adversarial thing away.

Mr. R. F. Johnston: I do not want to get into arguing about this. I just wanted to understand why you have gone the extra step. The government, it seems to me, in this very troublesome bill we have before us, has at least tried to deal with the notion that there should be compensatory access for that which has been denied on the basis of that which was denied, which surely, then, gives the child what was missed.

What you seem to be asking for is the next step, which is a kind of punishment of the custodial parent for the action to be included in that concept of access. As an outsider looking at this and the various sides that are coming in on this bill and trying to figure out where we should go with this sort of thing, I find it troublesome that there seems to be in your presentation this notion that a punishment vehicle really needs to be played into the bill.

Mr. Verkley: I think you are reading it wrong when you say "punishment." What example do we have? So they deny access. Well, it might be made up somewhere down the road provided you go through the court system or whatever. What is the compensation here? There is none, really. They can create the circumstances which create all the legal expenses. The children are all upset and everything. It is as if they can say, "Fine, so they'll make up the time and it won't make any difference anyway."

Mrs. Coutinho: May I say something? It is not meant as a punishment; it is meant as a deterrent against it happening again.

Mr. R. F. Johnston: I am not sure I see the difference.

Mrs. Coutinho: The reasoning is that if they are going to lose something by it, they will not try it the second time.

Mr. R. F. Johnston: Punishments are often used as deterrents, that is all I am saying, I guess.

Mr. Daigeler: I am not sure whether you were here this morning, but in case you were not, there were several groups that made the main point that this particular bill was not needed, that the system as it presently exists is working well with the exception of a few isolated incidents. I am just wondering what would be your reaction to that argument.

Mr. Verkley: The reaction would be that you find yourself in a situation where you are denied access to your kids and you will find 100 different circumstances and reasons this is not really dealing with the situation. As the situation is right now for the people we are dealing with in our group, you can be denied access and anything can happen. There is a real need to take away, as we said, these bullets that parents can use for denying each other's right of access to their children. As the law is right now, it is unbelievable what lawyers will hurl across the room in motions court. All we are doing is wanting to see our kids. They are using this, that and everything.

I am saying forget it; it is not right and it is not fair. All we want to do is see our kids. We want to be responsible here. We are not saying how the custody and the access should be set up—that will be decided in individual cases—but have it established so that both parents can get it out of the court system, which is a totally adversarial system, which we have all seen from the lawyers we have seen arguing the cases. In most cases, we do not have a word to say. We cannot say anything in motions court; it is just between the lawyers.

Mrs. Cunningham: We had some presentations this morning that were very much against any kind of mediation at all. I wondered what your thoughts were on that.

1400

Mrs. Coutinho: Of course, we are for mediation. We feel two parents who are truly interested in their children have a duty to try to resolve their differences in any way they can or at least come to a working agreement so that the children, again, are not the pawns. We think that if people come together and make an attempt to talk, it feeds on itself. At first it may be hard, but as time goes on and you resolve little differences, it gets easier, so we are very much in favour of mediation.

Mrs. Cunningham: What do you think about mediation where a child or a mother has been abused? What would your suggestion there be?

Mrs. Coutinho: In that case, it would depend on the type of abuse and how serious it was. I would be inclined to leave that up to someone who has some expertise in the field.

Mr. Verkley: I think we all agree that no one is in favour of that kind of situation. I think that particular situation should be dealt with right away and looked into by somebody who knows what is going on there. None of us want our children to be in that particular kind of situation. We really think it should be dealt with somehow through some system which we do not really have to present to you right now.

Mrs. Cunningham: I would like to thank you for a brief that I think will give us a lot of specifics to look at as we go through clause-by-clause. You have been extremely specific and you have explained your reasons. I think it is very thorough.

Mr. Chairman: Thank you very much for coming. Your time has expired. We appreciate the time you have taken to develop your presentation, appear before us and help us with our deliberations.

I call at this time upon Barry Bregman. Mr. Bregman, welcome to the committee. You have 15 minutes to present your case to us. You may divide that time between presentation and questions from committee members, as you see fit. We would caution you against making reference to any private matters which are before the courts or may appear before the courts.

Mr. Bregman: I have some handouts to distribute.

Mr. Chairman: The clerk will look after that for you.

Mr. Bregman: I do not know if there are enough. There are 11.

Mr. Chairman: Yes, that is the right number.

BARRY W. BREGMAN

Mr. Bregman: My name is Barry Bregman and I am from Ottawa. If you look at your handouts here, I am going to refer to some of them during my speech. I know I have only 15 minutes, so I will try to get the highlights.

I would like to read you part of an article from the Sunday Star back on November 6, 1988. I am just going to take excerpts because I do not have the time.

"On June 1 at 6:15 p.m. my only child, two and a half years old, was abducted from me. Her father, after deserting us several weeks earlier, decided to use our innocent child as a pawn in a tormenting game of revenge.

"Since that day, my daughter, her father and I have been entangled within the court process. The lawyers, playing their expensive lawyer games, the masters and judges, making their unsympathetic, presumptuous and often uninformed decisions—all are oblivious to the agony induced by their actions, while claiming to be exclusively concerned with the 'best interests of the child.'

"The courts have decided that on an interim basis I should see my daughter five hours a week, and four additional days a month. My crime...the fact that I was not able to arrive in court with my child first, is my only crime....

"I want my daughter back. She needs and wants her mother. That is what I work, hope and pray for, every minute of every hour....Yet I and countless other men and women are continually thrown into this disgusting pit of insensitive bureaucracy to fight for our children. And the innocent children, who will speak for them, feel their pain or hear their cries? I seriously doubt any of these 'experts' will ever realize the agony a parent and child feel when their life together is suddenly severed."

If we look at the overview of family law in the past 10 years, basically nothing has changed under both Conservative and the Liberal governments. We still have custody battles under the Children's Law Reform Act, we still have enormous costs when it comes to fighting these battles and we still have the words "enforcement," "liberal access" and all types of buzzwords which seem to be prevailing in the Children's Law Reform Act. Speaking as a noncustodial parent—and actually I have been involved in the Big Brothers organization, both in Ottawa and Sault Ste. Marie, for the past 10 years—I would like to submit to you that maximum contact is very important, for the children to see both their parents, and in the past 10 years really nothing has changed.

Recently, there was a study that came out in California by Judith Wallerstein, who is a psychologist, who did a study on children. She found that children did better with maximum exposure to both parents. As you know, or if you are not aware, joint custody has been in California since 1980. There have been some problems with it recently, but even in her study she said that maximum exposure to both parents was very important. Also, she said that mediation was quite important in helping the children.

Last year in front of the Legislature, the Attorney General, Mr. Scott, stated:



"Children in this province should never be used as pawns, and this bill underlines that principle.

"We want parents to realize, as I believe the courts have begun to realize, that access orders are designed to benefit the child, to ensure as much as possible that children have the opportunity to know and to learn from both of their parents. In other words, access is the child's right, not the right of the mother or the father. However, we also recognize that there are times when access can be legitimately denied, either by the court or, in exceptional cases, by the parent who has custody of the child....

"As I said earlier, the best interests of the child or children are paramount. Therefore, the legislation will recognize that there are times when access may legitimately be denied. Those will be rare occasions, but they may exist. Thus, while the underlying presumption is that denial of approved access is improper, there will be exceptions."

If we look at Bill 124, I guess the main problem is, and you have probably heard this in the last couple of days, subsection 35a(4), where there are eight possibilities where denial of access can be used. Just looking at the overview of it, there are so many excuses in there that really any unimaginative parent can make up to deny access. One of the articles in the folder I gave you has to do with false allegations. This was done through a study by Dr. Wendy Cole from Ottawa, and the headline of that one was "Parents Allege Child Sex Abuse to Win Custody, MDs Say."

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"An increasing number of parents are falsely accusing their mates of child sexual abuse to win custody battles, say doctors at the Royal Ottawa Hospital.

"There have been 30 such cases in Ottawa-Carleton in the past three years, nearly all of them involving a mother accusing the child's father of abuse, the doctors say."

You can go on and read that later, but if this bill is passed, as such, we are going to get more false allegations. There will be more costs for everyone and we will be back to the same old frustration and alienation of children from their parents.

I believe some of the recommendations that should be eliminated from this bill are some of the eight excuses in subsection 35a(4).

I also think we should have mandatory entry into mediation. In Ottawa, we have two mediators who have an 85 per cent to 90 per cent success rate with mediation. One of them was in front of the Ottawa caucus back in January, I believe. We had one of them speak in front of the Ottawa caucus. He has a very good success rate.

Also, there is a lady who works with family court in Kingston who also has a very good success rate. This was initiated by family court judge George Thomson back in 1973 as a pilot project. I feel that if it works in those communities, it can work anywhere. It just needs the co-operation of government.

It seems this government and the previous government, if you look at the last 10 years, have wanted to continue with custody battles. Both emotionally

and financially, parents are not better off, and of course, the child is not better off.

The second thing is the friendly parent rule in subsection 16(10) of the Divorce Act. Basically, that gives maximum contact with the parents, and of course, with the extended family. You have to understand, and I guess most of you realize now after hearing a lot of the submissions, that a noncustodial parent and the child get to see each other basically every second weekend and possibly two hours in the middle of the week—that is in a usual month—with two weeks of summer holidays and splitting the Christmas and Easter holidays.

If you add up that time, that is 12 per cent of the total possible time. That is just not enough. I think that basically people are just totally fed up with the way the government has handled the situation with custody battles. They are tired of paying the enormous costs to lawyers. As I said, no one is a winner. They are both losers when it comes to the children, financially, economically and emotionally.

You are going to hear this over and over. There are exceptions. Surely, we have child abuse. There are some good parents out there and there are some not-so-good parents out there, from both sides. The main thing is that the child should have maximum contact with both the parents and the extended family.

I guess the future of family law is basically up to you people. You have heard different groups over the past few days. If you go through some of the articles in here, you will see some of the comments by different groups. In the Lawyers Weekly of February 17, 1989, basically, the lawyers are not in favour of this bill. Their premise is that it is going to bring on more litigation, which is dead on.

If you consider mandatory entry into mediation, at least it will give the parents a chance to settle their differences. It works. It has been proven in the United States. It has been proven in Ottawa and Kingston, which is a short distance from here. I am sure if you inquire about mediation services in other communities in Ontario, they are working.

I think that is the key in trying to make this bill work. If we can possibly take away some of those excuses in there, let's concentrate on the ones when there is legitimate abuse. I believe there should be some penalty, not putting someone in jail, but we have to take the acrimony out of the situation. In order to do that, I believe mediation is the key, and not necessarily with lawyers.

There are plenty of mediators out there today. Most of them are nonlawyers who are human relations people and I think they have the background to deal with these individuals. When two people separate, the first year is the key year. Emotions are very high and the child, depending on how old he is, is very confused. If you continue to let both parents see the child on a continuing basis, for more than the liberal access, which is every second weekend—I do not understand how that ever started in the first place because everybody has a different job. I think it was easy for the lawyers, the judges, the official guardian and everybody concerned to make it that way. If you give it a chance, I think in a lot of cases you will have fewer people going to court.

My final point is that I believe there should be a family commission set up. I have talked to a lot of people. I have been involved in this for five

years. I think there should be a commission of senior family law judges, and perhaps you could invite some of the mediators who are well known in Ontario. You have some here in Toronto. You have, as I said, one or two in Ottawa who have been doing it for a long time. In Kingston, they have been doing it since 1973. Possibly you can invite some people from the different lobby groups, both men and women, and co-parenting groups, and try to see if in the future we can plan it together.

I think there is room for everyone to get involved in this. The bottom line is that we are concerned with their children. That is basically what I want to say.

Mr. Chairman: Thank you very much, Mr. Bregman. We have time for perhaps one question. Does any member of the committee have a question?

Mrs. Cunningham: You know, of course, that there have been groups here that are not in favour of mediation. I really like your approach. I think you have given us a very good overview. What do you do? You said you were in Big Brothers.

Mr. Bregman: I am a Big Brother. I have been a Big Brother in Ottawa for six years, but I have been affiliated with Big Brothers for 15 years. My father started it in Sault Ste. Marie. I was one of the original people with the Canadian Council for Co-parenting. I am also a football coach and basketball coach, so I work with kids a lot. That is basically what I do. I am a professional accountant by profession.

Mrs. Cunningham: On the bottom line on this Bill 124, are you therefore saying that basically it is unnecessary and we should be looking to the preventive part?

Mr. Bregman: Yes; right. On this bill, if we would put mediation in there somehow—I do not see how anyone could be against mediation. In fact, I would like to ask Mr. Neumann. It was in one of the articles that was published that there was supposed to be a mediation report released by Mr. Cochrane, and it somehow got out in the Globe and Mail. It is part of the articles here. A lot of people have been wondering where that mediation report is.

Mrs. Cunningham: Good question.

Mr. Chairman: I am not sure I have the answer to that.

Mr. Bregman: That is the way I want to end my remarks. I think that is very important. It was commissioned by the Attorney General.

Mr. Chairman: I understand it is being printed and translated and will be out—

Mr. R. F. Johnston: Next year.

Mr. Bregman: A lot of people are waiting for that report.

Mr. Chairman: Thank you very much for appearing before the committee and for your contribution.

Our next delegate is Mary Milota. You have 15 minutes for your presentation. You may divide your time between presentation and questions as



you see fit. I caution you to avoid making reference to private matters that may be before the courts or appear before the courts.

MARY MILOTA

Mrs. Milota: I am a grandparent who cannot get to see my grandchild. I do not have access to this 13-year-old girl. My son was married in 1975 but two years later that union fell apart. After separation, my son was falsely accused of abusing the child, but it was the current husband of the mother being charged and sentenced to 30 days for molesting the child. My son's restricted access to his child caused him many mental breakdowns and finally his death.

Throughout the years since infancy up to the age of nine, I cared for my granddaughter twice a month on weekends. With the child's mother certified as unfit, the children's aid society took her away and placed her in a foster home. For the first two years in the foster home, I was able to see my granddaughter once in two or three months, and in the last two years have not seen her at all.

Two year's ago, the children's aid society and the guardian's office tricked me into signing a document that made my granddaughter a ward of the court. This blatant deed on the part of the children's aid society stripped me of any communication and visiting with my granddaughter.

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The foster parents are preventing my granddaughter from writing or calling me on the phone. She is under psychiatric care and being given drugs to control her hyperactivity in order to have some quiet environment in a foster home, where are also her younger brother and three other children from the son of the foster mother.

You see here why my granddaughter needs the help of a psychiatrist and medication. Over the years, after my son's marriage breakdown, she encountered many men who were visiting her mother in their basement apartment; among them, a cannabis user and a preacher.

In spite all of this, I was and still am trying to help my granddaughter grow up into a normal person and not end up a total failure like her mother. Also, manipulation of the child's mind, telling lies and half-truths, will do no good to a very young person.

It came to the point when my granddaughter told me she does not want to come to my house any more. This was the influence of the foster mother and the children's aid society and the guardian's office. Nobody knew the real feelings of my granddaughter. On the previous visits to my house, she always cried when the time came to go back to her foster mother. I have doubts about the children's aid society workers who are not able to recognize the needs of a child and ship her to a stranger's house.

A few years ago, I tried to get full custody of my granddaughter. It would have been free of charge, at no cost to the state. A child needs more than accommodation. She needs love and caring, and in my case, to keep the memory of her deceased father. Blood relatives—you will have to give me a few minutes.

Mr. Chairman: You have plenty of time, so just take your time.

Mrs. Leeson: A child needs more than accommodation. She needs love and caring, and in my case, to keep the memory of her deceased father. Blood relatives must not be cut off from a grandchild. Access to grandchildren by grandparents is very important to a youngster. It teaches her or him of family ties and heritage.

I have also written to the following people and have proof of this information of what has happened to my granddaughter. If I had received the help then, my son would still be here and my granddaughter would not have suffered so much trauma, which she still is: Alderman Howard Moscoe; MPP Allan McLean; Attorney General Ian Scott; John Sweeney, Minister of Community and Social Services; Mr. Finlay, director of the Children's Aid Society of Metropolitan Toronto; Chief Justice Howland; Frank Jones of the Toronto Star. It is signed Mary Milota. Thank you.

Mr. Chairman: Thank you very much for your presentation. I am sure it must have been a very difficult time for you to come before the committee to speak of these personal experiences. Are you able to respond to questions?

Mrs. Milota: The thing is that I was not able to put all that has happened in the last 13 years in here. I have many letters and documents, but this is the first time I have been able to speak on my own, to let anybody hear anything. Even when you go to the courts—I have been in and out of courts. You just run out of funds and nothing is done.

Maybe somebody wants to ask me a question. I will try to answer it.

Mr. Chairman: Are there any questions from members of the committee?  
Mrs. Cunningham.

Mrs. Cunningham: Maybe I can make a statement and you can help us along a little bit here. We have been told that with the present act, the words "blood relative" should be strong enough when people are looking at custody and/or access. Obviously, in your case they were not strong enough, or there may have been other reasons for custody but perhaps not access. I am just wondering if you are one of the people who feels very strongly that the word "grandparent" should be in there as part of the law.

Mrs. Milota: There was no reason. I mean, it took nine years before the children's aid took the child out of the home. They were sent there many, many times and did not do a thing about it. It was through my persistence that they finally took the child out of the home and placed her in a foster home. I thought I would be first in line, because this is how I found out my granddaughter was being abused. She and I were just together and she was free to speak to me. I would pass this on to the children's aid, and they would go back there and they would deny it. Then finally they took them out. She is in a foster home now, but nothing is being done. On account of my getting after the children's aid people, I guess they did not like this. I do not know what the reason is.

Mrs. Cunningham: You are saying the problem may in fact be the legislation, but it is also partly how the system works.

Mrs. Milota: It has a lot to do with the system too, because when I am going in and out of court, it is all right for everybody else. I mean, my husband and I are paying all the time and nothing is being done. You go into

court; it is adjourned, adjourned, adjourned. You go to many doctors. They want you to do this, and therapy. You go to all of these places. In the end, you are back at square one. Nothing has been done.

In the meantime, you do not get to see your granddaughter for two years. They do many things with her, and her mind is, how should I put it, manipulated to the point that she does not know whether she is coming or going.

Mrs. Cunningham: We appreciate your coming today to tell your story. You are making it very real on behalf of a lot of other people as well.

Mrs. Milota: I hope so, because I would like to see something done about this.

Mr. Chairman: Thank you very much, Mrs. Milota.

Our next presentation is from the Ad Hoc Woman Lawyers Committee. Representing this organization, we have Carole Curtis and Geraldine Waldman. Welcome.

Ms. Curtis: Good afternoon. We have a third representative.

Mr. Chairman: Okay. I will let you introduce yourselves in a minute.

Ms. Curtis: We come in numbers.

Mr. Chairman: You have one half-hour for your presentation. You may divide the presentation over that half hour as you see fit between presentation and questions from committee members. I probably do not need to caution you about making reference to matters that may appear before the courts, but I have been asked to do that by the committee.

#### AD HOC WOMAN LAWYERS COMMITTEE

Ms. Curtis: Thank you. Good afternoon. I am Carole Curtis.

Ms. Waldman: I am Geraldine Waldman.

Ms. Murray: I am Ellen Murray.

Ms. Curtis: I thought I would start by identifying our constituency. We have filed a brief and we are going to be making some brief oral submissions and giving the committee an opportunity for questions as well.

Our constituency basically is 15 family law lawyers who practise in Toronto, all of whom are family law specialists. The combined experience of the group of us is more than 100 years of experience in practising family law, and our written submission and oral presentation are really based on that experience.

I also want to try and put these remarks in context for you. That context is that most family law lawyers try very hard to avoid court at all costs; basically, to avoid court for all issues, but particularly for some issues. Those issues dealing with children are probably at the top of the list. In particular, family law lawyers try to avoid court with respect to access problems.



I also want to start out by saying that when families separate, the relationships parents have with their children are going to change, and they are going to change for ever. This is probably not desirable, but it certainly happens, and it is regrettable. I suggest to you that the law is an imperfect tool to try and address these problems. To some extent, the quality of the relationships that parents have with their children after separation is really going to be a reflection of the quality of the relationships they had during the marriage.

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In our view, this bill has some serious problems. I am really going to speak to the two most important issues, I think, with respect to the bill.

The first issue is that we feel there is no need for this legislation. We feel that there is not a problem out there with respect to enforcement of access. Indeed, if there is a problem out there, this bill will not solve that problem. Just shortly and simply, lawyers do not think this bill is needed.

The second concern, and by no means the second in importance, is the fact that in our view this bill is not child-focused. Let me explain what I mean by "child-focused." "Child-focused" is a term used by family law lawyers and mental health experts to talk about addressing a child's needs, putting the child at the centre of your decision-making or your comments, putting the child's needs first. In our view, this bill deals with parents' rights instead and focuses on the rights of the noncustodial parent to time with the child rather than dealing with this issue from the child's perspective.

Access is increasingly being treated in our courts as the right of the child to see the noncustodial parent. This bill does not approach it from that perspective at all and, in fact, in an area of great concern to us, it does not even require the courts to consider whether or not ordering makeup time is in the best interest of the child in each particular instance.

Those are the two areas that most concern us. The brief deals at much greater length with those areas.

The only point other I want to make—I have a couple of smaller issues to deal with—is that there certainly are going to be a number of cases out there where access is a problem. In these families, that problem may not be resolvable.

In these families where access is a problem, there may also be many other areas that are problems, and some of these problems really have very little to do with the children. They have more to do with issues surrounding anger and control and the baggage that people take with them when they leave a bad marriage. In our view, some of those problems may never be able to be resolved in these families, but this bill certainly will not resolve them.

Ms. Waldman: I would like to talk for a moment about the issues of joint custody and mandatory mediation. Although they are not specifically in this legislation, I am led to believe that they have been subject to some discussion at the committee and have been matters which the Legislature has been bending its mind to in various ways.

As a preface to that, I also would like to talk about this legislation, because it falls within that context. We find it easy to assume that issues affecting children are simple. We have all been children. Many of us are

parents and we have our own thoughts on how it is to raise children and what matters to children.

I submit to you, quite frankly, that that is not the case and that the issues affecting children are extremely complex and complicated. I should say, first, that I find it somewhat upsetting and surprising that this bill has been put forward without any comprehensive research done about the impact and the implications of this legislation.

It has been our experience in the past when family law has been amended that often the implications of that are very wide-reaching. We have not often understood the full impact of what is going to happen when we amend these bills. I am concerned about that, particularly since, quite frankly, the bulk of this is going to fall on children and not on adults.

The second thing that concerns me is that we are talking about the issues of joint custody and mediation within the same context, but we have not embarked upon a comprehensive study of what those things really mean and what the issues really are in terms of joint custody and mandatory mediation.

I am aware of the fact that there are a number of recent studies coming out of the United States concerning the issues of joint custody and mandatory mediation and that the jurisdictions in the United States which have had joint custody and mediation in place, in particular California, are now beginning to move away from that. I am aware of the fact that in the summer of 1988, California amended its legislation to remove the presumption in favour of joint custody.

It concerns me that we in this jurisdiction are talking about a presumption in favour of joint custody or putting joint custody more in the forefront when the jurisdictions which have had lengthy experience with that have decided it is not appropriate and is not working well in those jurisdictions, and we are doing that without looking very carefully at the experiences of those jurisdictions, and in particular California.

I would point out to you that Judith Wallerstein, who was one of the pioneers in the whole area of joint custody some 10 years ago or so, has recently published a book which includes a 10-year longitudinal study on the issue of separation and joint custody. She followed families for a period of 10 years, and it was her conclusion at the end of that that joint custody or presumption in favour of joint custody is not appropriate.

I would submit that before we proceed any further with passing legislation in the area of family law, it is very important that we actually sit down and look very carefully at what we are doing, what it means, what the available research is and what it is telling us about the issues; particularly joint custody and mandatory mediation.

I am also concerned, as I said at the outset, that certainly that kind of research was not undertaken prior to the passing or the implementation and the putting forward of this particular bill.

Ms. Curtis: The only other thing I wanted to say before I suggest that you can ask us questions if you want is just to give you some idea of who gets access in our court system in family law.

The answer to that is that just about everybody gets access who wants it, particularly if they go to court over it. Courts rarely restrict or deny

access in any way, even in cases where there is incest in the family, even in cases where there are mental health problems, even in cases where there have been assaults in the family, even in cases where there has been a murder by one parent of the other parent. In talking about access enforcement, you are really talking about a very broad range.

Those are all the submissions we have.

Mr. Chairman: Thank you very much for your presentation. We have plenty of time left for questions, so perhaps we can have a good exchange and take advantage of the expertise our three presenters bring to us today.

Mrs. Cunningham: I was aware of the position you would take just from having followed some of the press around this particular piece of legislation. I was happy to hear your comments around makeup time. It does look good on paper, but it is a source of argument in the home when it is something they try to do now and it really makes the children more unhappy. I said that yesterday; we are really talking about kids.

I was not sure what you were saying on the part where you charge the person for the trip if you took it and you were not able to visit. Did you have an opinion on that one?

Ms. Waldman: Are you talking about compensation for expenses?

Mrs. Cunningham: That is right, yes.

Ms. Waldman: We did not deal with that in the brief because I do not think it is one of our major concerns. Compensation for expenses, I believe, was put in because there is some sense that it cuts both ways, you know?

Mrs. Cunningham: Yes.

Ms. Waldman: The custodial parent can get compensation for expenses under certain circumstances and the custodial parent may have to pay compensation under certain other circumstances.

In regard to the latter, if you look at what we are talking about in terms of how most custodial parents and children live and the fact that they do not have very much money, to expect that they are going to pay compensation, in my view, is only going to punish children further, because it is money out of their mouths.

In terms of the other side of the discussion, I sincerely hope that my clients do not ask me to go to court to get compensation for the baby-sitter they had to hire because the father did not show up for access on the weekends.

It is those kinds of issues that, in my mind, are promoting litigation. Saying to people, "If he didn't come for the visit, I can go back to court and get you money to pay for the baby-sitter," is completely ridiculous. It just does not make sense.

Mrs. Cunningham: I am obviously pleased with your position. I still share so many of the fears of the people who have come before this committee and I am just wondering where to go. With this bill, they were talking about speeding things up. That is one of the reasons for the bill, okay? I can see



maybe that is a good thing to say, but, in your views, does this speed things up? Does it make it easier? I am talking about children now, remember.

Ms. Waldman: What, the procedure?

Mrs. Cunningham: I am talking about whether the bill solves the problem of speeding things up, because the worst thing we can do in Ontario right now is make all kinds of promises around these pieces of paper when people are waiting longer out there. This whole province is starting to wonder what the state of our institutions is, and you lose faith. That is what I want you to address.

1440

Ms. Murray: If I can respond to that, if you are asking whether this bill speeds up a resolution of access difficulties, I think we would all give the answer no, probably for two reasons.

One is that the bill presumes that the access difficulties are simple ones. The whole structure behind the bill presumes that this is just a custodial parent who, for no good reason, is saying, "No, you can't have access." I think most of the family law bar would say that represents maybe 0.5 per cent of the cases. All the rest of the cases are about the 12-year-old who has other things to do and who does not want to go with the access parent all the time or the custodial parent who has some legitimate concerns about dangerous activities that the child is being exposed to on visits. They are all situations that require much more than a half-hour oral hearing, and that is the type of hearing, probably at the maximum, this bill contemplates.

The other part of the answer is that, at least in Toronto, our court system is so clogged up that I do not think any of us can imagine how the oral hearing within 10 days contemplated by the bill is going to take place, and people are going to get very frustrated.

Now when a custodial parent who has not been paid support finds it necessary to go to court or through support and custody orders enforcement to go to court to try to get some of that support when garnishment is not available, that custodial parent will probably wait five to six weeks at a minimum to get into court. I think it is promising people the impossible to say, "If your visit on Saturday is denied, we're going to have you into court next week."

Ms. Waldman: Evidentially, it is a nightmare. If you assume that these access difficulties are not simple—and they are not, in our experience. There are access problems in many cases that move through all of our offices. In most cases, it is a phone call and you yell at your client and you say, "Hey, what's going on here?" Everybody cools out and the access happens.

In the cases where it is going to be more of a problem and where we are going to use the courts, the issues are extremely complex. We will not be able to get medical evidence; we will not be able to get assessments; we will not be able to get the official guardian involved. All that is going to happen is that the information before the court, if it can get there in 10 days, in our view, is going to be grossly inadequate and inappropriate. You need lots of information that ought to be in front of a court making decisions that will not be there.

We have all had cases where someone has been wrongfully denied access,

and that is unfortunate. I know we have all had to say to clients at a certain point in these cases, "The court can't help you." There are lots of people—not lots, but there are some people out there who do not see their children who probably ought to, but I am not convinced and we are not convinced that this law will change that for them.

We all can see it creating lots of other problems, but it is not going to solve that problem for that small group of people, and that is unfortunate. If we could think of a law that would help them, we would be happy to tell you, but I do not think that problem can be solved in a court forum.

Mrs. Cunningham: One last question. If you could think of a law that would help them—I love it, of course—in reality, we have had people come before the committee and say, "We need this law, because we have not seen our kids for six months" or something. What do you do in your practice? I mean, what you would like to do is avoid that situation. What should the government be spending its time and energy on, rather than writing this stuff and making promises? What should they be doing? Tell us. There is only so much money and time.

Ms. Waldman: I wear two hats. I am also the president of the board of directors of Access for Parents and Children, Ontario, the supervised access program, Lakeshore Area Multi-Service Project. One of the things that we all agree you could do as a government is put money into supervised access programs. It is very important.

Ms. Curtis: One of the advantages of the supervised access facilities that are already available is that they do not just provide supervision; they provide a DMZ, a demilitarized zone, for transfer. That is a very essential element in families where there is a great deal of conflict. Transferring your children for access at McDonald's or at the local police station is not appropriate. If we could get more funding into those things, there would be less access conflicts.

Ms. Waldman: I have this vision of how these programs might operate. Instead of operating on a minimal level, as they now are, we could have social workers on staff. They could actually be working with both sets of parents while the children were at the supervised access, with a view to weaning people out of that in some kind of a constructive way. I am not sure that would always work in every case.

I also think that the other thing we have to look at when we are looking at this is what we are trying to accomplish in terms of the children. We have to look at whether access is always appropriate, what the courts are using as criteria. I think we have to step back one step further. Lots of people who are coming here saying, "I am not getting access" maybe ought not to be getting access. They are not going to tell you that, and I do not know that that is true, but it is my suspicion. There are people who are not getting access who probably should not have access, sometimes for reasons that have to do with their behaviour, sometimes for historical reasons that have to do with what happened in the family. We have to be looking at that also.

Access is not a God-given right. We have to start by looking at it that way and also assessing what we are trying to accomplish with access. If our concern is the rights of children, as I hope it is, then we have to be stepping back and saying, "What are we really trying to do?" That is why we

feel it is very important that we review the whole area of family law. We are putting Band-Aids on bleeding wounds and we are not fixing anything.

Mrs. Cunningham: I heard your observations on joint custody.

Mr. Chairman: Mrs. Cunningham, perhaps we can move to Richard Johnston, and if there is time left after him and Mr. Owen, come back to you.

Mrs. Cunningham: If he asks my question, I will move to him.

Ms. Curtis: I would like to say just one thing. If we are concerned about the rights of children, this bill does not address the rights of children.

Mr. R. F. Johnston: That is where I want to start off, and I will come to mediation if I am allowed a second question. I liked the brief a lot and the emphasis on the rights of kids.

I presume you therefore think that subsection 20(4a), the new one which says it is naturally in the best interests of the child to encourage and support the child's continuing parent-child relationship with the other parent, that each parent has that responsibility—from what I am hearing, you do not necessarily hold that this section is a good change to existing law.

Ms. Curtis: If I can deal with that, in fact, I do not know that it is a change to the existing law. I think, in practice, courts now operate on the basis that it is in the best interests of all children to have maximum contact with each parent. Having it enshrined in legislation is a significant departure from our current situation and may result in a change in the way it is interpreted.

We make detailed submissions in our brief about the fact that there is no research to support that position; that in fact there is research to support the fact that that position is not correct; that it is not in the best interests of all children to have maximum contact with both parents. Judith Wallerstein, once again, the California guru of family law, has recently suggested that.

The problem is that where there is extended and continuing conflict and hostility between the parents, it is not going to be in the interest of those children to have maximum contact. In fact, for those children it may be in their best interest, regrettably, to have no contact with the other parent.

Once again, whose rights are you worrying about? If you are worrying about the noncustodial parent, whether that adult needs contact with the child, that is fine, but that is a different set of priorities from worrying about the child.

Ms. Waldman: While we were preparing this, we had this meeting, and one of the other results of maximum contact is this bizarreness that we now get into when we are trying to negotiate access schedules. Carole told the wonderful story of this three-year-old who spends every fourth night in a different bed. She said the three-year-old is starting to exhibit behavioural problems, and we all said, "Well, what a surprise."

We wind up trying to devise these schedules that try to split these children up. You wish you could take a cell and make a clone and send one off with each parent. We have these kids who are spending Monday to Wednesday with



one parent, Thursday night with the other parent, Friday with the other parent and Saturday to Monday with—it is back and forth because everyone has this idea that maximum contact with each parent is really important. Sometimes you sit and look at this and think, "If I had to live this life, I would be in a mental institution," and we are asking a young child to live that life.

Ms. Curtis: Would you like to spend every fourth night in a different bed as an adult?

Interjections.

Ms. Murray: I think it is important to remember that in a significant number of cases that come before the courts now too, you are not just talking about two parents. There are different surrogate parents involved; there are grandparents involved. You get these arguments that become geometrically worse, the scenario Ms. Waldman was talking about where you have four different parental or quasi-parental figures saying, "I want a piece of this child," and the child is getting sliced up like a pie. At least, we should have research on what that does to a child before we go any further in that direction.

Ms. Curtis: In fact, the request for research is probably our biggest plea, our biggest request, that the committee look at the extent to which these decisions are being made in a vacuum and without proper data.

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Mr. R. F. Johnston: The parliamentary assistant can respond if he wishes, but we have already had it confirmed that there has been no study done in Ontario of any of these matters and that what we are relating here is supposedly the experience of the bar and others in terms of the needs. I do not know which question to ask, because I know when I launch it all three of you will get into it and it will be my last question.

Mrs. Cunningham: Can you imagine making decisions under this kind of pressure, time pressure, can you? "You have got 15 minutes. Do not take more than 17 seconds." It is not your fault, Mr. Chairman. We are all stuck with it. It just happens to be ridiculous.

Mr. R. F. Johnston: And there go another 10 seconds.

Ms. Murray: Imagine a judge in family court trying to do that with all these—

Mrs. Cunningham: I know. It is the same thing, yes, with kids' lives.

Mr. R. F. Johnston: I also thought excellent your evidentiary comments about the problems of the child's interest being represented within that 10-day period and the whole notion that, unlike the Child and Family Services Act where we have given certain rights to kids who are 12, there are no rights in this.

I noticed a little buzz in the crowd when a fairly major statement about access not being a problem was made, because we are hearing from a lot of people who are having problems with access. What we are dealing with here are people who, after the access orders have been established, are then having difficulties, primarily with getting it. The argument that we have been given by the government is that because they have to use contempt legislation or a

contempt action, people do not pursue it, that it is too cumbersome—again with no statistical backup—that it does not take place and therefore we have a need to do something about it. You seem to have actually summarily dismissed the problems of people who feel they have been wrongfully denied access at this point and find the legal system does not give them any remedy at this stage. I wonder if you would respond to that.

Ms. Waldman: Carole has something to say about this whole issue of contempt, but there are no studies. We have looked. There are no studies. There are a couple of studies I am aware of, but there is no specific Ontario study that I am aware of. All we can do—Carole and Ellen and I—and what we did was we spoke to people from our own experience and we spoke to the bar. The family law bar is a very small bar in Toronto and we deal with each other all the time. I am aware of the fact that the Canadian Bar Association's brief is going to say pretty much the same thing as ours in terms of the necessity.

What you are hearing in this committee is that the members of the bar who are on the front lines and who are the ones that these people phone and say, "I'm not getting my access," are not saying, at least in our experience, that this is a big issue. Now having said that, over my 13 years of practising law I have had clients who will not get access and who ought to have had access. There will always be those people, and that is not fair. I agree, but I do not think that you need to have this kind of law to deal with those people, and it does not deal with those people.

Mrs. Cunningham: It is not going to fix it.

Ms. Waldman: No. If you said to me as a mother, "If you don't give your children arsenic to drink, you're going to go to jail," I would say, "Where's the jail?" I am sure any mother would. If you say to some of these women who are denying their husbands access that if they do not send the children they are going to go to jail, to them you might as well say, "Give them arsenic to drink." I am not saying that these men are equivalent to arsenic. Some of them are probably fine men, but from the women's point of view that is how they feel. There is not a law in the country that I can think of that would make any difference.

I read in People magazine about this underground in the United States where children and women are being hidden because they are so opposed to access orders. I hope we do not get to that in this country. I would be very distressed, but that is the extent to which women will go in those situations, and you cannot make a law that is going to change that.

Mr. Owen: Before this hearing started and since we have heard from, it seems, almost all men, because I gather in almost all these instances the wives have the custody. They have said that the system, as we have it now, is not working. They seem to be reasonable, and I have checked into a few and they are. The child is always sick or the child wants to go and play baseball when he is 12 years of age or there are all these reasons. You say it has nothing to do with the rights of the child, but the legislation continually says it is whatever is in the best interests of the child. Usually it is in the best interests of the child that those contacts with the father be reassured, cultivated and further developed.

Ms. Waldman: That is your assumption. That is not necessarily true.

Mr. Owen: I appreciate that all of the references—

Mr. Chairman: Are you getting to a question?

Mr. Owen: I am. I appreciate that every time you have referred to clients, it has usually been a woman client, but I have been approached by male lawyers who acted mainly for male clients and they say that something has to be done, it is long overdue, and they are pleased—we have heard it here—that finally something is going to be done about it.

Ms. Curtis: I think I would like to deal with it. First, I do not think it is a correct assumption that all three of us act exclusively for women. I certainly do not, and I do not think these other two do.

Mr. Owen: I did not say that, and I know it is not true, because I know of a couple of you in terms of your professional —

Ms. Curtis: Second, I think what is truly in the best interests of children, quite frankly, is no conflict between their parents or as minimal amount of conflict as possible. What the studies basically say is that children are not inherently damaged by the separation. What they are damaged by is the hostility and conflict between their parents. If you just think of your own family life, you can sort of have some sympathy for that.

Will this bill accomplish a minimization of the conflict between parents? Undeniably no. It will not. In fact, what this bill will do is take a family in which there is already serious conflict, or problem, if you like, add additional heat to the fire, polarize the parents, put them in court and make me and these two other lawyers a lot more money, because we will all be in court a lot more. This will not satisfy the concerns of people who want there to be a better life for separated children.

I do not think any of us have said today that there is not a segment of the population who may have this problem. There certainly is. I have acted for both sides of this situation and I have obtained some successful contempt orders in the past. In my view, though, where the situation is so serious that you must go to court for a contempt order, it is not going to fix the problem. It is only going to make it worse. Some of those problems are not resolvable; not by the legal system or by mental health professionals or by mediation or by anybody. I think it is a fantasy to think you can fix everybody's broken problem.

Ms. Murray: I think what Carole is saying is that a lot of the problems you will probably be hearing about are social work problems; they are not problems that are easily solved by the legal system. In terms of the bill not being child centred, I think all you have to do is look at the procedural sections of the bill to get one indication of that: The time frames that are set up do not allow any realistic opportunity for children to be represented in this process or to get any expert evidence that might be necessary to let what is in the best interests of the child be presented to the judge. It just is not there in 10 days.

Mr. Carrothers: I wonder if I could turn to your comments on the bottom of page 5 of your brief. I think you are referring there to the proposed subsection 20(4a). I just wanted to get you to expand a bit on your thinking there.

As I read that proposed section, it is proposing or suggesting a duty of co-operation in the circumstances, and only in the circumstances, where either under the separation agreement or by some other order access has been awarded;



in other words, the determination of whether there should be access has been decided somehow and now there is being implied here that perhaps, for the best interests of the children, there should be some co-operation there.

On page 5, you have gone on to indicate that somehow this would lead to acceptance of joint custody. I am just wondering if you could explain that, because I do not quite understand how you get there from that section.

Ms. Curtis: The "friendly parent" rule, if you like, first made its appearance in Canadian law, in any event, in the most recent amendments to the federal Divorce Act. The most recent amendments suggested that in determining custody, the court would look at which of the parents was prepared to co-operate with the other parent and facilitate the noncustodial parent's contact. That is making the assumption, once again, that the maximum contact rule applies and, as we have said, there is research to suggest that is a wrong assumption.

Mr. Carrothers: Are you, then, not referring to the section that is in Bill 124 when you make that response?

Ms. Curtis: What we are referring to on page 5 is the subsection 20(4a) duty of separated parents we referred to earlier, saying there is a positive duty to encourage and support the children's continuing parent-child relationship with the other parent.

Mr. Carrothers: Right, in those circumstances where access has been awarded or there has been agreement for access. It seemed to be a little narrower than the commentary you are giving me suggests, because the duty only arises when access has been determined to be there or agreed to.

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Ms. Curtis: I understand your point, but we already have almost three years of experience under the federal divorce law--

Mr. Carrothers: With what appears to be broader, yes.

Ms. Curtis: ---with what appears to be a similar, if I can just use that word, requirement. It has been the experience of the family law lawyers who prepared this brief that clause is being read in a different way than we had hoped or expected and that there is some pressure on parents who maybe do not believe, for very good reasons, that it is in the best interest of their children to ensure that they facilitate maximum contact, even if they feel otherwise---say an incest family, for example---out of a concern that they will lose custody if they do not appear to the court to be reasonable and co-operative.

Mr. Carrothers: I understand that point.

Mr. Chairman: We are running out of time. I would like to give Mr. Jackson a chance to get his questions in.

Mr. Jackson: Thank you for an immensely helpful brief and for causing us to consider some very valid points.

I am most disturbed by the bottom of page 7, where you talk about the onus on the consideration of assessment of a person's ability to act as a parent versus that of the best interests of the child, which I tend to agree

with, quite, frankly.

I agree with your point, but my question has to do with the fact that you use the research documentation in the United States, experientially what has in fact happened. To your knowledge, to what extent has that been known to the government and the draftsmen of this bill? Has there been any discussion through any of your affiliated groups with respect to pressing upon that point?

Right at this moment is not the time, but at some point, we will be able to ask the question of the degree to which that research material has been made known to the government and the extent to which it embraced it or rejected it. You seem to be very conversant with it.

Mr. Chairman: Could we hear their answer?

Ms. Curtis: Yes. I think you have to ask the government that question rather than us. I have no idea to what extent the government is conversant with this research. If we are conversant with it, it is out there; it is not hard to find.

Mr. Jackson: Finally, you make the point about the government's ability to be aware of what will happen after this bill has been implemented. Obviously, there will be a greater demand on various services. You make the point about the court services. The Lakeshore Area Multi-Service Project has been discussed previously. To what extent have there been discussions with the government in terms of accelerating that support network or mechanism, in concert with either children's aid societies or school boards, which is another whole area?

Ms. Waldman: I know there have been many discussions with both the Ministry of the Attorney General and the Ministry of Community and Social Services about supervised access programs. I also know that it was raised in the House on more than one occasion, I believe from both opposition parties, in terms of funding for the access program in Metropolitan Toronto.

I am also aware of the fact that the government certainly has been aware of some of the research. Some of it is very available. You can buy Judith Wallerstein's book, *Second Chances*, in any popular bookstore. I know that your legislative library has access to the various American legislative amendments. Certainly, if the government were interested in obtaining the California amendments, they would be made available. They have been discussed with various people in the government.

Certainly in terms of the supervised access, I believe the government is well aware of that problem. They have been made aware of that by judges, the practising bar, any number of people.

Mr. Chairman: Thank you very much for taking the time to research your brief and present it to us, sharing with us your expertise on the matter.

Our next delegation is Don McIntyre. Mr. McIntyre's brief was distributed this afternoon. It should be on your desks.

Welcome to the committee. Thank you for coming. You have 15 minutes to present your case, your information to us. You may allow some time for questions from the members within that 15 minutes. That is your choice. We would ask you to refrain from making reference to private disputes which may be before the courts or could appear before the courts, just as a caution to you.

## DON MCINTYRE

Mr. McIntyre: I would like to thank you all for the opportunity to address you on this very important topic of access enforcement and the government's proposed solutions in Bill 124. I am currently a noncustodial parent and have been since January 1987. My ex-wife and I are in the midst of an emotional, immature and irresponsible custody fight. With only 15 minutes to address you, I do not want to speak too much of my case other than to give you the general background.

To be as polite as possible, my wife found a replacement for me. In January 1987 she applied for interim custody of our three children, interim support and interim exclusive possession of the matrimonial home. A London judge gave her interim custody and interim support, but would not remove me from the home as there was no physical or mental abuse.

When I came home from work one night six weeks later, she met me at the front door and threw my supper at me. Less than pleased with my new custom wardrobe, I grabbed her by the lapels of her gown and told her never to do that again. Of course, you guess the next step: with the accusation of physical abuse, I was out of the matrimonial home and separated from my children. That was over two years ago.

The support order was never changed to take into account that I now have to rent accommodations suitable to house myself and the children. We agreed at separation to joint custody with a six-month split. That interim order still stands today. My wife never did live up to our joint custody agreement. I have been through three lawyers, have lost my job and business and am well over \$23,000 in debt with no end in sight. A trial date has not been set. I feel therefore that I am well qualified to address you today and tell you how it is.

I am loving, caring father. I was involved with my children's nurturing while we lived under the same roof. In fact, the children were my responsibility from the moment I got home from work at night until I left in the morning and all weekend up until the separation. I need your help. My children need your help in this matter.

I have read Bill 124 many times and there are a few areas that I am concerned about. I was also here for the hearings on Friday afternoon and one question which kept coming up from the committee bothered me as well. Each person who addressed you from an organization was asked how many members it represented. The answers varied from 50 grandparents to 2,300 in another group or simply unknown. The question made me feel that because some of the numbers were relatively low, our concerns, whether we were for or against Bill 124, were not that important.

There have been over 500,000 children involved in separation or divorce in the past 10 years in Canada. That number is increasing at an alarming rate. I am sure that almost every parent of these unfortunate children would like to address you during these four days, but that of course is not possible. The people you see over these four days are very representative of the problems, I can assure you.

It is very difficult to attend these hearings. Most people who are affected by access problems do not know anything about these hearings. To my knowledge, they were advertised in only one night's paper in London—that is all there was—on the back page of the first section combined with the no-smoking bill.



Most people have to work and cannot get time off to come during regular business hours. Most will not pick up a pen and write a letter to a committee, because they are too lazy, cannot find the time or do not feel that it will do any good. Others are afraid to get up and speak, others are just too hurt to talk about it any more and still others think someone else will take care of it for them. Please keep in mind the staggering number of children who are affected by separation and divorce and the staggering number who will be affected in the future.

From what I have read, about 40 per cent of marriages in Canada end in separation or divorce. That figure doubles for children of divorced families. If nothing changes in society, in all probability two or all three of my children's relationships will fail. If we do not convince you to make some amendments to the Children's Law Reform Act, my two boys could be separated from their children just as easily as I have been from them. All it takes is a few lies on an affidavit and 10 to 15 minutes in front of a judge. The children of Ontario and the rest of Canada deserve a better break; so do noncustodial parents, grandparents and other relatives on the noncustodial side of the family.

I am delighted that Bill 124 was put on the table. However, two sections of it concern me greatly. First of all, if the custodial parent were fair and reasonable, there would be no need for an access enforcement bill. Why then give the custodial parent all the power to deny access just on an accusation? Giving the custodial parent excuses to deny access is inviting exactly what you are trying to avoid.

Second, this bill is unenforceable. I was supposed to have my children for Easter; I did not. I cannot afford to have my lawyer go to court to get an order to make up time that my wife can deny based on any one of eight excuses that the bill has given her to use. I cannot afford the costs; my wife cannot afford the costs to defend her actions or pay the court costs if they are assessed.

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I do not want my wife to incur those costs. My children are the only ones who get hurt with every court action that either one of us takes. Every dollar spent by either one of us is a dollar not spent on food, clothes, education or some other necessity of life. Obviously the deterrent of a financial penalty has to be there for the habitual offender, but I do not feel it is in anybody's interest to use it unless absolutely necessary.

I think there is a much better solution to problems of custody and access. The human sciences have recognized the benefit to the children of joint-custody or shared-parenting arrangements. The studies on joint custody's effect on the children of divorce are new and much more has to be explored, but one important fact that has surfaced from virtually all the studies is that in the worst possible examples of joint custody, where the parents are still intensely hostile towards each other, the children are no worse than those children in a sole-custody arrangement with parents who are continuing their conflict. The fighting of their parents is the main cause of their negative development later on in life.

Just to interrupt, this is not in the actual paper. It is taken from the current 10-year studies of Judith Wallerstein—it was referred to by the last delegation—in the chapter on joint custody in her book *Second Chance: Men, Women and Children a Decade After Divorce*. I think her interpretation could do with some review.

With this amendment to the Children's Law Reform Act, you, the governing body of Ontario, have the opportunity to take much of the conflict out of the process of separation and divorce. Just as you have made it easy to split the matrimonial home in two through legislation in the Family Law Act so that it is fair to both parties, it is now time to take an even more important step and take the children of divorce out of the net family property and guarantee them their rights to continued love and support from both of their parents and their right to love both of their parents in return.

This change must be done through legislation, not through the adversarial legal system. Family law lawyers, by and large, abuse the good intent of the law and hide behind its flaws in order to get the best possible deal to fulfil their clients' wishes, with total disregard for the best interests of the child. Legally, both parents are entitled to the custody of the children, both federally and provincially. In reality, the old saying that possession is nine tenths of the law prevails.

In Ontario, the interim order is usually the final order, whether it was initially based on good judgement or bad judgement. A family law lawyer will hide behind an interim order that is in his client's favour for ever. The cost of varying is excessive and the probability of success, regardless of documented proof, is slim.

The legal profession recognizes this problem. Philip Epstein outlines it clearly in his paper for the Ontario bar admissions course and advises the conscientious law student to beware of establishing the status quo to satisfy his clients' requests and thereby disregarding the needs of the affected children. He recommends the use of mediators to family members involved in separation or divorce.

Judith Ryan, a Toronto lawyer and president of Family Mediation Canada, was cited with approval by the Quebec Supreme Court for her article Joint Custody in Canada: Time for a Second Look. This article takes a close look at the history of custody and access awards and the human science evaluations of joint custody. A copy is included with my proposal to you. Please read it and digest it.

Several references to empirical studies are mentioned which I bring up at this time because of their importance. Dr. Judith Wallerstein's and Dr. Joan Kelly's research "is significant for traditional custody policy because it shows:

"a) That traditional sole custody is not without problems and may in fact have serious negative effects on children;

"b) That traditional visiting pattern of every other weekend is simply not enough for most children and their fathers to maintain a positive relationship over time; and

"c) That the greater incidence of adjustment problems for boys may be a function of a custody policy which places them more often in the sole custody of their mothers....

"In another study, Steinman looked at 32 joint-custody 'veterans' ranging in age from four to 15 years. Seventy-five per cent of these children had lived in joint-custody arrangements for over one half of their lives. She found that joint custody was beneficial for children in three major areas:

"1. They received the clear message that they were loved and wanted by both parents;

"2. They had a sense of importance in their family and the knowledge that their parents made great efforts to jointly care for them, both factors being important to their self-esteem; and

"3. They had physical access to both parents and the psychological permission to love and be with both parents. This protected them from the crippling loyalty conflicts often seen in children caught in the cross-fire of their parents' ongoing battles."

Another important point that should be noted in this article is the finding that relitigation rates were half as much, 16 per cent, in joint-custody families compared with sole-custody families at 32 per cent.

Finally, I think the committee should all be aware of the Research Facility memorandum from the Law Society of Upper Canada on joint custody. I could not reproduce it without permission for you, but it is available just down the street at 481 University Ave.

It gives an excellent description of the federal and provincial laws covering custody and joint custody with interpretations that the courts are arriving at based on these laws. It primarily covers all the relevant case law that is currently in use. To say that these 33 pages are educational and sometimes frightening and sometimes refreshing would be a gross understatement. There are judges out there in the field who are recognizing the problems of the current judicial system and making case law to correct them.

For example, this is just one of many:

"Richer v. Thompson (1985). In this case, the court made a joint shared interim custody order, requiring the child to reside with each parent in alternate weeks, so that both parties would be in an equal position at trial. The order was confirmed on appeal."

In another example:

"Banks v. Banks (1987). Unified Family Court Judge Goodearle stated...involvement by the husband in decision-making and planning would make him a better parent than if he were a mere visitor and the child would benefit accordingly. The possibility of having to resort to the courts occasionally if the parents cannot agree on issues is a small price to pay where joint custody is in the child's best interests."

Judge Al C. Hamilton, from Manitoba, goes one step further in his efforts to defuse the explosive custody fights. In his address to the Organization for the Protection of Children's Rights in October, 1988, in Montreal, he outlines some of his successes in handling custody disputes.

In his courts, the pre-trial conference is treated as a mediation session with the judge being the mediator. If the case does go on to trial, that judge cannot hear the case. Judge Hamilton strives to get the parties to admit to each other that both are good parents and then suggests co-parenting arrangements. His orders do not specify sole custody or joint custody, but instead specify the time periods when each parent has care and control of the children. His orders have been backed up by the Manitoba Court of Appeal.



I do not yet have permission from Judge Hamilton to reproduce his speech—I wrote him only last week—but if you would like a copy, I would gladly provide the committee with one as soon as I hear back from him.

There is no end to the documentation of the value of joint or shared custody. The National Film Board has produced Dad's House, Mom's House. Part of the accompanying booklet is included with my presentation. I have also reproduced a suggested reading list from the London custody and access project. I have read all the books, in some cases more than once, and they uniformly applaud the progress made with joint-custody arrangements.

Access enforcement is an important issue. It can have a long, expensive judicial solution, or it can have a quick legislative solution that will benefit the children. You have the opportunity to rectify the system now. I do not want to put my lawyer's children through school; I want to put my own children through school.

If you do not legislate presumptive joint custody at this time—and Dianne Cunningham's comments on Friday are correct, it would take another five years before another amendment to the Children's Law Reform Act would be heard—then assuming no increase in the divorce rate, a quarter million more children will suffer needlessly the loss of a loving parent. You have a very responsible position. The people of Ontario are watching you, as are the other provinces, for they will follow in your footsteps. Good luck and thank you very much.

Mr. Chairman: Thank you for your presentation. You pretty well used the 15 minutes for your presentation. I can see you timed it quite accurately. We do have one member who has asked to ask a question. Mr. Owen, can you be very brief?

Mr. Owen: Yes. I just thought your presentation was helpful and impressive. You could probably be representing yourself and avoid paying for a lawyer.

Mr. McIntyre: It has crossed my mind.

Mr. Owen: Again, you are endorsing the joint-custody thinking, and I agree with you it is very important that the child should have an in-depth relationship with both mother and father wherever possible, but one of the concerns I have had expressed to me about the proposal is that a child normally will establish relationships with a teacher or with other children in the class, with neighbours and other children in the neighbourhood when they are with the one parent. How do you address that problem if you say the child has so many days here or so many days there?

1520

Mr. McIntyre: I think both parents have to take into consideration the best interests of the children, and I think if they choose to separate they are giving up their right to live far apart from each other. I live right beside the school of my children. When we separated, we agreed on joint custody. The condition, which we both agreed to, was that neither one of us would leave the school district.

There was a good article in the Globe and Mail not too long ago about that, about parents giving up their rights for job opportunities, etc. There is no pressure on people to work out their problems any more, and it is much

easier to divorce and walk away after a spat than it is to stay together. If parents are not going to try their very best to work something out and preserve the marriage, then they are obligated to make that sacrifice and not move further apart from each other for the sake of the children until such time as the children are old enough to go their own way.

Mr. Chairman: Thank you very much for your presentation, for taking the time to research it—

Mr. McIntyre: I cannot have another 15 minutes?

Mr. Chairman: I am sorry, it would not be fair to all the others we have kept to the time limit.

We will next hear from the National Association of Women and the Law. Representing them: Nicole Tellier, Judy Parrack and Robin Geller. Welcome to the committee. Please introduce yourselves and let me know which one is which.

Before you proceed with your presentation, I should tell you that you have half an hour. You can divide it as you see fit between presentation and questions. I am sure you heard the caution I gave to others about making reference to cases which may be before the courts.

#### NATIONAL ASSOCIATION OF WOMEN AND THE LAW

Ms. Tellier: We would like to apologize for the late circulation of our brief, but we hope you will be able to read along with us. We want to thank you for inviting us here.

My name is Nicole Tellier. I am on the national steering committee of the National Association of Women and the Law, which is composed of about 1,000 women who are lawyers and academics and students across the country. To my immediate left is Judy Parrack, and to my further left is Robin Geller. The three of us are members of the Toronto chapter and the three of us specialize in family law. We are all lawyers.

For those of you who may not be familiar with our organization, we are mandated to promote equality in the law and we have done this through a number of lobbying initiatives and have lobbied extensively both in the national forum and in the provincial forum. We have been active in the area of family law reform, both when the Divorce Act came before the House a few years back and also in promoting family law reform at the provincial level.

I am going to make some preliminary comments which will summarize the general concerns we have with Bill 124, then we will tell you a bit more about our specific concerns, then open it up for questions.

Before I do that, I might add that it is usually our practice when drafting briefs, because we hope we have some of the skills as lawyers, to offer alternative language where we find the particular language problematic. In our recommendations it has always been NAWL's practice to actually provide the committee with some suggestions. In this instance we have specifically not done that, because we do not feel that Bill 124 is helpful in any form whatsoever. That is how strongly we oppose it.

There are a number of reasons for the opposition. The first is that there is really no evidence to support that this type of legislative intervention is warranted. There was reference made by the women's group that

preceded us that there is a lack of empirical research to support that legislative intervention of this nature and in this magnitude is warranted. We would concur in their submission that before a bill of this nature is to be passed, there is a requirement that further research be done so that we are clear that we are addressing the problem fully. We take that as a major premise of any legislation: You must ask, "What mission does this seek to achieve?" and make sure that it is fine-tuned to do that. Without the benefit of more empirical data, I do not think this bill will achieve that.

Second, this type of legislative intervention encourages litigation. It offers a quick remedy, quick access to the courts, and it discourages parents and their counsel from talking things out and negotiating.

The amendments to the act are not child-focused, in our view, and they do not address the best interests of the child. This type of legislation gives paramountcy to access problems over other family law issues. We find this particularly difficult. This is done in a number of ways, mostly through the procedure that the bill establishes. Essentially, it sets up a mini trial within a 10-day period. In doing so, the family law lawyer will, by necessity, have to drop everything and prepare for such an eventuality.

There is no other litigant who receives that kind of treatment in the area of family law. In focusing so much time and attention on an entire trial over access, it leaves less time for both lawyers and the court administration system to deal with more important problems, in our view, those being custody, child support and other matters. If it is a problem, then it should certainly be dealt with on par with the other problems but not given this preferential treatment.

It is also our submission that access problems can be dealt with adequately under our existing laws. Also, it is our view that the procedures contemplated by this bill simply cannot be accommodated. I would like to say at this point that it is not only this group's submission and, I am sure, the submission of any practitioners' group—the ad hoc committee that presented just briefly before us—but also the Canadian Bar Association's position that this legislation is simply unworkable for lawyers. I think that needs to be dealt with.

Finally, there is a presumption in the bill that it is always in the best interest of the children to have contact with both parents. We would take exception to this assumption. You have just heard from a gentleman who, I believe, quoted Wallerstein's research. That was quoted to you earlier as well, and you may have some confusion. There was a study done earlier. It is a result of her more recent work that the presumption in California for joint custody has been revoked. It is her more recent research which makes it clear that it is not always in the best interest that maximum contact occur. If you are inclined to follow up on the citations which have been provided to you, I would like to draw your attention to the most recent work and what has been done in the United States in response to it.

There have also been some comments made recently about joint custody and research that led to the passage of those laws in the United States. Again, some of the research that was quoted was research done on voluntary joint-custody arrangements. The whole point is that when parents are in conflict with each other and you have court-imposed custody, it does not work. We cannot look to the research where it is a voluntary joint-custody arrangement and say that is what is best for children, because obviously those parents have been able to co-operate and are not creating the very problematic



area that we are talking about today. So again, that is a caution when you look to the research.

I think in the interest of having time for questions, I will pass the floor over to my friend Ms. Parrack.

Ms. Parrack: Good afternoon. I have a couple of short comments that I would like to make before we open it to questions. The first is, part III of the Children's Law Reform Act deals specifically with custody and access, with the focus throughout every section being the best interests of the children. Having sat here through a couple of the presentations before us, I heard Mr. Owen's comment with respect to the amendments which in fact focus on the best interests of the children. I would submit that there is only one amendment in Bill 124 which directly discusses the best interests of the child, and that is the amendment under subsection 4a, which would be an addition to section 20 of the act.

There is not enough in this bill which addresses the best interests of the children. In fact, the bill dilutes the court's obligation to look at what is in the best interests of the children. I would like to point you to two specific things.

1530

One is the amendment to clause 24(2)(b) which deals with the views and preferences of the child where such views and preferences can reasonably be ascertained. The change is to state "if" they can be reasonably ascertained. It would be my submission that this is in fact a dilution of the court's obligation to ascertain what it is in the best interest of the child before making a determination with respect to custody and access.

My second point is that, given the time frame and the limitations on what can be presented at an oral hearing, there is no provision for the involvement of the official guardian. The official guardian is specifically mandated in this province to present the best interests of the children to the court. Given their workload and the demands on their time, the time limitations do not allow them to participate in the way it has always been assumed they should participate in order to present the best interests of the children.

Just to add to what Ms. Tellier indicated, that there is a presumption in this bill that it is always in the best interest of the child to have ongoing access with both parents, I do not think that is true. I do not think that individual cases necessarily hold that position. It is important in family law to look at each situation on a case-by-case basis. You look at the facts, you determine what is in the best interests of the children and you make a determination there. You do not automatically presume that it is always in the best interest of the child to have access to both parents.

Finally, I would like to just point out a few things on the new section which is proposed, section 35a, specifically subsection 4, which deals with what is the justification of wrongful denial of access.

First, there is absolutely nothing in this section that discusses the best interests of the children. It is a section focused on parental rights. It puts the onus on the custodial parent to justify why access was denied and it is my experience that in many cases women have custody of their children and they have limited resources. This amendment is requiring them to expend more

of their resources to defend an action which in most cases may be reasonable, moneys which should go directly to the care of their children. This section puts women on the defensive, and I think it is an inappropriate way to deal with access problems.

Finally, I would just like to point out that there is an amendment that has been put in under clause 24(2)(d). It is a brand-new section. We have had a lot of discussion about it. It says that the court shall consider "the ability of each person seeking custody or access to act as a parent." It is my submission that the whole section deals with the ability of a person to act as a parent. I am wondering if the intent is to bring conduct of parents in by the back door and hope nobody will notice. Thank you.

Ms. Geller: I would just like to make a few brief comments about the need for the bill. I think both Nicole and Judy have dealt with that to some extent. I see it as a two-pronged question. The first is whether we have established the need either through research or studies; there seems to be a generally accepted view that that is not the case. The second is to look at what mechanisms are already in place to deal with the problems when they do arise.

My feeling when listening briefly to the gentleman who spoke before us was that the biggest problem he had was inadequate representation. While the system we have in place at the moment may not be ideal, I think we have to recognize that the problems we are facing in dealing with access enforcement are not problems that allow for an easy or simple solution. In dealing with it, we have to look at what we have now and whether we need more than what we have now to address the problem.

Essentially what we have now, in my experience—and I have not been practising for a great deal of time, but in my discussions with other lawyers—is a mechanism whereby the access problem is resolved through negotiation. Sometimes that negotiation occurs at the very first instance between the parents, or if there are grandparents involved, when the problem occurs.

If it is not resolved at that initial point, then lawyers often do become involved, and again, I think the comment was made by one of the women representing the ad hoc committee that you speak to your clients. In some cases, you will find that there is a method of dealing with it simply by pointing out that one person is being unreasonable. Failing that, you get in contact with the lawyer who represents the other parent and some negotiation will then take place, the idea being that you are going to try to focus on the problems that really exist. That has to take into account the history of the relationship, how both parents are dealing with the breakdown of the relationship and what impact that is having on the children.

What you do not want to do is to try to provide an adversarial, quick out for the parents that they are going to be likely to want to resort to, particularly in cases where either one or both of the parents are not coping well with the breakdown and are looking for a forum in which to express their unhappiness. Rather than focusing their efforts on negotiating a solution, the tendency, I suggest, will be to opt for a court situation where they see they have an opportunity, once again, to express their unhappiness about the ex-spouse's behaviour to the court.

The sort of addendum to that is that we are usually in a situation where it is the husband, who is usually the access rather than the custodial parent,

who has more money to embark on that kind of an endeavour, and it would force women to have to spend money to defend the use of this proposed bill if it were in fact being used.

If negotiation does break down, we do have ways of dealing with this through the court system in the same way that other matters are dealt with, usually on the basis of affidavit evidence, which allows us to acquire evidence from a variety of persons who may have knowledge about the problem and gives the official guardian time to get involved and make submissions before the court. You can have medical evidence brought in, if necessary, if there are allegations of abuse involved. None of that would be available under the proposed legislation.

Finally, when you take a look under the current legislation at what remedies exist to deal with problems, if a problem has in fact occurred and someone is unreasonably withholding access, I have reproduced in the materials that you have before you the various sections of the act that address this today.

It is my belief and certainly my experience that compensatory access is awarded in some instances where it is suitable and where it is in the best interests of the child and that there are additional remedies. The section is a very broad section and allows the master or the judge hearing the motion a great deal of leeway in fashioning a remedy that is really appropriate to the circumstances.

We go on at greater length to deal with the other remedies that are available, the payments of money, and I am not going to go into those at any length right now but will simply refer you to our submissions. We will be happy to answer any other questions you may have about our submissions.

Mr. Chairman: The first question is from Mr. Johnston.

Mr. R. F. Johnston: I enjoyed your brief. The earlier group of women lawyers also raised this whole question about this new standard of 10 days for going through the system that is being established here. Not being a cynical person, being the wide-eyed innocent that I am, this is perhaps just the beginning and all people are going to get this kind of guarantee in the next little while in future amendments we will see from the government. Who knows, he said facetiously.

Do you have any idea at the moment of how much the official guardian is involved in custody and access disputes?

Ms. Tellier: I could not give you statistics, if that is what you are asking for. I can draw on my own personal experience, which is that they are involved quite a bit. There is a custody and access panel that sends out representatives to the various jurisdictions. In order to get their involvement—it is often impossible to do so with just a telephone call—there needs to be a court order or an indication that a court order is forthcoming. Then the regional representative will be sent the court order and the pleadings in the case, and at that point they can become involved.

Clearly, under the current mechanism there is no way in the world that they would be able to get involved, and certainly no way that they could get involved in a meaningful manner and have the kinds of interviews that would be necessary. We submit that their involvement is necessary, because access problems are not usually a case of one denial of access.



I would like to think that if someone were denied access once, he would not be running to the court as the first remedy either now or under the proposed legislation. The reason he would want the official guardian involved is because access is a recurring problem. More evidence needs to be brought before the court than can possibly be done in the procedures that are contemplated by this Legislature.

1540

Mr. R. F. Johnston: Can we just ask the Attorney General's office to get us the statistics on that if possible? Maybe our own legal researcher can get us a bit of background about exactly how the official guardian's office works in this way; it would be useful to us, I think.

Mr. Cochrane: Do you mean the role of the official guardian's office at the time of making of an access order? Because I think maybe the comments that were made are valid in that respect. Or do you want it at the time of enforcement?

Mr. R. F. Johnston: Both would be interesting if you have them.

Mr. Cochrane: I think we should have both.

Ms. Parrack: Can I just add something? I am sure we do not want to give you the impression that the official guardian is brought in in all custody and access cases. Often the parties resolve the custody and access between themselves, either alone or with the assistance of counsel, so the official guardian is brought in in the situations which cannot be amicably resolved between parents and/or solicitors and/or all of those people.

Mr. R. F. Johnston: In the absence of the statistics that are there, though, it would just be interesting to see what we can get on anything. I want to raise two matters which seem unrelated to your brief at this point, but you have raised a number of matters that have already been canvassed by a group prior to you.

One is a matter I have always thought was serious in terms of access; that is, somebody leaving the province, just sort of disappearing even if there are access orders already there. Sections 37 and 38 of the present act, as I was reading it this morning, really seem to deal with the problems of somebody who has access, not custody, leaving the province with a child and breaking the access order.

The act does not seem to deal very much with the person who has custody leaving the province and the person who has access then having a complaint about this. What is your experience with that? Am I reading those sections incorrectly? Is it not a problem in terms of the absolutely intransigent problems between the ex-husband and ex-wife ending up in that kind of disappearing act by one side or the other?

Ms. Parrack: The fact that parents may or may not disappear when they are exercising access—it does happen. Legislation is not going to prevent that if in fact there is such animosity between the parties that it cannot be resolved either by discussion between themselves or between their lawyers or in going to court. Are you referring to the present section—

Mr. R. F. Johnston: Sections 37 and 38 of the present act deal very strongly with the person who has access taking off with the child. The act

does not seem to deal at all with the person who has custody doing the same thing, infringing separation orders.

Ms. Tellier: There would be remedies available if the custodial parent left the province with the child. There are different levels of judicial scrutiny, depending on whether there is a nonmobility clause in the agreement or there is no specified access in the agreement or there is a court order. There are cases which differentiate, but there is certainly an opportunity to bring the matter before the court on a motion, on short notice, and have the child returned. That can be done and that can be dealt with.

I might add a comment that this is another area where Canada may or may not follow the path of the United States. It would be our submission that the custodial parent, when the moves are in the best interest of the child, should not be prohibited simply because of the access of the noncustodial parent. Again, the focus should be on what emotional gains or material gains might be occasioned by this move.

Let's look at each one on a case-by-case basis rather than either prescribing prohibitions or allowing it to occur. I think usually that is done prior to a move. There is some forewarning and there can be a judicial determination.

Mr. R. F. Johnston: One other small matter—

Mr. Chairman: I would like to go to the other two and then come back to you if there is time.

Mr. Carrothers: I am wondering if I could just get some further elaboration from you, because I am having a bit of trouble understanding the context in which you are seeing this bill, as opposed to what I thought it was operating in.

I thought this was a fairly narrow focus that was beginning with the situation where access had already been dealt with, where the issues that I think you are dealing with had probably been settled with the official guardian and so on. You have had the broad discussion of what is the best thing to do. You have now had a determination of what should happen. The provisions here are simply focusing on what happens if those things do not happen. You have talked a lot about the problems that might occur if there are only 10 days, or some expeditious way, and made some comments.

I wonder if you might elaborate on why that should not be, if you are just dealing with the small area of what to do now when something that was supposed to happen did not. Obviously it is in the interest of all parties to get that result fairly quickly. As I read this, I may not be seeing something, which is why I would like you to elaborate. The situations that you seem to be pointing to are very complicated problems, are they not? Okay, you have a hearing or a motion within 10 days. Could that thing not be laid off for some further evidence?

I do not see anything here that says you have to have a determination; it just means you get it before a judge. In most cases, it might be pretty straightforward and there are those cases where it is not. That seems to me to be the way to go. I would like to understand why you think it is not.

Ms. Tellier: The language in the act is actually mandatory. It says that it "shall" be heard. I assume that there will be some judicial discretion

and yes, you might be able to have a brief adjournment. But to go back to where I think you started your question, access problems which have reached the stage where the parties believe they need judicial intervention is not a case that can be dealt with simply.

By virtue of the very fact that it has got to that stage and negotiations and other things have not resolved it, you are going to need to build a case in which you tender evidence on the entire history of access, not just the isolated incident. You certainly need to get evidence about what is happening to the child at that particular time. It may be that the denial is occasioned by a 12-year-old.

Mr. Carrothers: You are talking about it being a rehearing. I may just not be understanding what happens, so excuse me for interrupting.

Ms. Tellier: If you look at what evidence is allowed at the hearing, none of the things that I am talking about are permissible. Evidence is limited only to issues that are relevant to that particular incident. That is one problem we have with the procedure. So you are getting a very limited trial of an issue where, in fact, I would suggest that that is not appropriate if you want to get a full determination of what is best for the child.

Second, you are doing it very, very quickly. There may be medical evidence that is pertinent. The motion has to be brought within 30 days, so it is likely that by the time a defendant or respondent in this kind of motion finds counsel, she--and I use that word advisedly because most of the time it is going to be a woman--is going to have less than a week to find counsel, prepare a defence, be in court to do it and convince the court that there should be an opportunity for more evidence to be brought.

It makes no sense at all. If you ask yourself what the problem is and what the problem is from the child's perspective, this just does not do it.

Mr. Carrothers: If I may, Mr. Chairman, we had a fairly long discussion earlier and I really would like to chase this point down. I am not understanding it and I think it is important.

Mr. Chairman: Okay.

Mr. Carrothers: Just to get a proper understanding, I guess what I am focusing on or thinking about is that you have a situation where, as we have had examples earlier, you get custody every second week. It has been determined that with all of the broader information that would be available, that is the way to go. Now it just does not happen.

It seems to me that is a fairly limited question. At least, if there is a process to deal with that limited question, why did it not happen? Was it justified in perhaps saying no and not reopening the whole access thing? Or are you saying that every time something does not occur under the access arrangements, you should reopen the whole question and have a retrial? I think I hear you saying that.

Ms. Tellier: No, I am not suggesting that. I am suggesting that in the majority of cases where there is the problem as you have described it, we deal with that all the time and it is not a problem. The problem is when those avenues do not work. The scenario you have described is one access denial. This bill does give the parent in that situation, if he or she chooses, the opportunity to run with it, go to court and get all the guns out, instead of picking up the phone and discussing it. That is one problem with it.



Mr. Carrothers: The guns only come out in terms of denial. They do not go to the broader question. I guess that is the point, or am I missing something?

Ms. Tellier: What I was trying to convey is that in most cases a single access denial or an apprehension of a denial can adequately be dealt with now. It is the more problematic cases that require court intervention, and this kind of intervention is inappropriate and misguided.

1550

Ms. Geller: If I could just make one comment, I think it may be easier for you to take a look at specific examples. I have a couple of cases that are not before the courts where access is a problem, and it is a problem because the father has a drinking problem. Now, you are going to have to get evidence of that drinking problem before the courts. We have had denials of access that have taken place because on the previous access visit the husband went out, took the kid with him, got drunk, and the kid was exposed to things he should not have seen. How are you going to deal with that?

You have to take a look at the whole context within which an access denial has taken place. There may be some straightforward incidents in which the mother has scheduled something for the kid when the father should have come to visit. Those are not the kinds of situations where we are going to be going to court. We are usually going to court where there is some basis for the denial, whether reasonable or not.

That is the question the court has to decide, but it cannot be done in isolation. It cannot be done without looking at whether there is in fact a drinking problem. Is there a drug problem? What kind of activities is the husband involving the child in? I have had children brought to parties where there are adults involved in extremely inappropriate activities for children to be exposed to. You have to look at all of that when you are looking at why someone has finally made a decision, "No, I am not going to give you access today."

Mr. Carrothers: We have had some suggestion that this right should be two-sided, not just one-sided. Maybe that would do it.

Mr. Chairman: We should move along at this point. We are over our time, but I sense the committee is interested in the expertise of these particular witnesses.

Mrs. Cunningham: Yes. We are very fortunate to have you here today. We really appreciate your brief and your enthusiasm around this issue. I wish you could help us and tell us exactly what to do on this.

Mr. Jackson: I thought they had.

Mrs. Cunningham: I do not think I got it just straight here. I think you might have said to throw out Bill 124.

Mr. Jackson: And do more research.

Mr. Chairman: Would you ask your question.

Mrs. Cunningham: You do not like to listen to this, Mr. Chairman. Why not? There are too many Liberals on this committee.

Mr. Chairman: I am conscious of fairness to all delegations in trying to treat them more or less equally.

Mrs. Cunningham: Do not worry. We will get to the point here.

I am kind of interested in the point you make on page 15. You take a rather strong stand that you oppose court-ordered mediation in family matters. I want to make one comment. I thought when you described on—I have lost the page now, probably page 23 where you talk about your interaction with your clients. I think you are all probably very caring lawyers. In some instances, we do not get people who interact the same way and as soon as somebody moans and groans, the first thing you do is go back to court. People do not take the time to get people talking. I think I am right on this, in very few instances, but you know what I mean.

If no one gets the talking process going and there are no custody or supervised access programs or support programs in the community and they do not have the kind of advice and support you would give your clients, that is why we get people, coming even to my office, describing what has happened. That is why I thought this court-ordered mediation under certain circumstances would be a good thing.

You do not like it, so I want you to tell me—

Ms. Tellier: It is the certain circumstances. I think mediation as an alternative to dispute resolution should have a place in family law, and there are many times it can be useful in resolving disputes. But what typically happens in mediation is that unequal bargaining partners—the woman being the emotionally and economically more dependent and subordinate of the two mediating partners—are placed in a so-called neutral mediation environment, so the mediator is not to take sides in any way and therefore cannot redress the imbalance of power. The mediator's measure of his or her own success is a mediated result, an agreement, an out-of-court settlement at any cost.

It has been my experience that what happens is that women will, time and time again, give up their economic rights in order to secure the rights of their children, particularly custody. Any legislative encouragement of this forum gets my red alert going because of that.

I think there are times when it is appropriate but in many circumstances, and certainly if there is any kind of emotional or physical abuse, it is strictly inappropriate from our perspective, and it should not be used.

If the court encourages it or adopts it in the way it does in this bill, I am afraid women will be seen to be unreasonable if they do not avail themselves of this avenue, and they will be punished, so to speak. They will be seen as being unreasonable and adversarial, when in fact all they will want to do is to avoid a situation in which they have very little to gain because of that imbalance. That is our concern.

I think most solicitors—certainly in my experience where I think it is

helpful—would suggest it, but our organization has always taken a firm stand in opposing judicially imposed mediation.

Mrs. Cunningham: So you would go for something like, as suggested, supervised access programs?

Ms. Tellier: Absolutely. I would echo all the comments that were made by the Ad Hoc Woman Lawyers Committee. I think one of the questions that was put was, "What would happen if six months had gone by?" I think if you introduced supervised access in a visitation centre with qualified support staff and if government put the money behind that kind of thing, you could reintroduce access and eventually not require supervision altogether. But running into court and having a trial on one narrow issue is not going to solve it.

Mrs. Cunningham: I appreciate that.

Mr. Chairman: I know we are well over your time, but Mr. Johnston spoke to me about a quick question he had and I think it is an important one.

Mr. R. F. Johnston: I just want to make a comment and you can respond to it. On page 15 of your comments, you did not dwell on subsection 35a(5), which is when the person fails to exercise the right of access, which I saw as being thrown in as a sop to the women's groups to accept this new move. I was pleased to see you basically say that this is an inappropriate place to put it and it does not hold equal weight. I thought members should note that because you did not dwell on that as you went through your comments.

Ms. Tellier: The other sop to feminists and to women's groups is that there is now the introduction of the presence of violence as a part of the best-interests test. I think that is the only thing in this bill that is redeeming, but it has really nothing to do with access enforcement and that amendment could have been proposed and should have been proposed a long time ago.

Mrs. Cunningham: Right to the original legislation.

Ms. Parrack: I would just like to make a comment with respect to the failure to exercise access. I am not sure how the legislators thought they would enforce this. Do you tie up the access parent and bring him to the house and chain him to the door and force him to exercise access? This is a personal service type of amendment. In contract law, you cannot enforce such a proposal.

Mr. Chairman: The parliamentary assistant would like a quick question.

Mr. R. F. Johnston: Absolutely. If Ian Scott were here, he would have been interfering all afternoon.

Mr. Offer: I have a question. Obviously, we know that in terms of the question of custody and access and the hearing before the court, there is a great deal of evidence and information that is available or possibly made available prior to that determination. From that, there is an order made: custody to one, access to the other, I assume, at this point.

This bill is talking about where on the basis of all of that information, that order is not being complied with, and about providing to the



parties a right, and we say as quickly as possible, to have that order enforced.

In terms of some earlier questions, whenever that was posed the response was, and this is why I ask the question, that there may be a whole change of circumstance. I understand what you are saying on this, that there may be a change in terms of the ability of one of the parties to either have custody, to retain custody or to exercise access.

My question is, if that is the case, is it not true that we are not dealing with this bill, but that we are dealing with the information necessary to vary an order? I would like to get your thoughts as to why this bill comes into play in those circumstances you have indicated as opposed to what usually goes on, and that is a full-blown variation of the initial order.

What we are talking about in this bill is that where there is not that information, where there has not been that change in circumstance, one person is denying another access. We are trying, through this bill, to give that person who has been denied access a right to have that initial order enforced. I would like to get your thoughts on that.

1600

Ms. Parrack: I am sure we all have comments on that. My comment would be that yes, when there is an order in place with custody and access determined, it may not be necessary to have a full-blown viva voce hearing in order to determine whether or not access should be changed. That is definitely a variation application.

Mr. Offer: And outside this.

Ms. Parrack: Maybe so, but I would draw your attention to this legislation and the fact that in your proposed amendments, in what you set out as what constitutes denial of access, the drafters have indicated a whole range of areas where denial of access could be justified. That range, which I do not think goes far enough if you are actually going to do something and implement this section, mandates having some kind of hearing.

It does not just say: "We look at the one incident of access on the particular day. There are reasonable and probable grounds for believing that the person is impaired by alcohol or drugs." That, in and of itself, is based on a history of a relationship and based on what happens when the person arrives. It is not a static determination. I think that is what you are sort of looking at.

Mr. Offer: I am not actually, because what I see in those particular eight examples of the reasons for denying access is an inexhaustive list through which the custodial parent may say to that person who has been given access, "Notwithstanding a previous order, an order that has been based on a fair degree"—in the usual case—"of information from the official guardian, because of these excuses, I am going to deny access." It is not to say, as has happened in some further responses, that this means the whole matter is open; it is to say, "In this one particular instance, this order that has been previously made, I am going to be denying the exercise of access for these reasons."

If it turns out that these particular reasons, and I said earlier this morning that they are not meant to be cast in stone as an all-inclusive list,

if it turns out that this is symptomatic of a change in condition of the participants, either to access or custody of a larger nature, then we are now outside of these particular amendments; we are now into a situation where there can be a variation of the initial order, where further and fuller information can be brought forward. That is not what this bill is about. This bill is to say that where there has been an order made in terms of custody and access, that order ought to be enforced, enforceable and complied with. It is not meant to be anything more than that.

Ms. Tellier: I will make two brief replies, if I may.

Mr. Offer: I would just like to get your sense on that.

Ms. Tellier: I think that many times access orders are not complied with in the strict wording of the orders, that reasonable parents make variations in order to accommodate changes in the age and stage of their child's development. If a variation is warranted, what this bill does is actually give somebody the opportunity to use this in the guise of a variation application, get a head start and get into court faster, as I see it, because this entire bill promotes litigation.

Mr. Offer: In terms of your initial responses to these changes, if there is a necessity for variation, would you not want to promote such a manner, because you are saying it is these conditions—

Ms. Tellier: Not under these rules of evidence and not under these time constraints.

Ms. Geller: I think you make an important distinction in looking at the difference between an isolated incident of access denial and what may be an ongoing problem that exists between two parties. Maybe that is the most appropriate time to bring a variation application. But let's look at the reality of the situation. We are often dealing with a woman who has a lot fewer resources and we are saying, "Let's put the onus on you to come back into court and tell us why your husband shouldn't have access," when in my experience there are often very good reasons why access is not being provided.

Mr. Offer: Of course, but the point is that there has been an initial order made and what we are doing is giving the custodial parent the right to come and say: "Yes, I realize that initial order was made, and the person came to the house at this particular time on this particular day. Now I have denied that for this reason." That is now in legislative form. It is now giving the person the right to say that.

Ms. Geller: The point we are trying to make is that we do not want to encourage coming to court and we certainly do not want to try to put—I think our concern is that the focus of the bill contains a presumption that there has been a wrongful denial of access when access is being denied, and that is what we have difficulty with.

Mr. Offer: The wrongful denial of access is founded within an initial order. That has been made by a court at an earlier time, at an earlier date, with an awful lot of information provided.

Mr. Chairman: I think—

Mr. Offer: I am sorry; that was my initial question.

Mr. Chairman: I think that has been an excellent exchange. I have allowed it to go and perhaps there might be some value—

Mrs. Cunningham: I think act 2 should be tomorrow or some time. They should come back. This is very important.

Mr. Chairman: There might be some value in some private discussion to work out the different perceptions of what the bill is intended to do. I am sure when we get back to clause-by-clause after the Legislature resumes, we will have opportunities to question the parliamentary assistant more fully on the rationale for the bill.

I would like to thank you for coming before us and sharing with us your expertise and the benefit of your experience.

Our next presentation is from the Supervised Access Action Group. Representing them is Judy Newman.

Mrs. Newman: I am Judy Newman and I am the chairman of the Supervised Access Action Group.

Mr. Chairman: And with you is?

Mrs. Newman: With me is Carol Rawson, who is the provisional director of the Metro Parent-Child Meeting Place, which is a proposed supervised access centre for Toronto.

Mr. Chairman: Thank you for coming and welcome to the committee. You have one half-hour to divide as you see fit between presentation and questions. As I have done with other groups, I caution you against making reference to private disputes that may be before the courts or may likely appear before the courts.

#### SUPERVISED ACCESS ACTION GROUP

Mrs. Newman: Thank you. I distributed a copy of our brief prior to speaking. I want to thank the committee very much for giving us this opportunity to address our concerns regarding supervised access and Bill 124. I think supervised access is a very specific issue that is related to Bill 124.

The Supervised Access Action Group was formed in September 1988 in order to bring together people in the field of supervised access and people who are interested in supervised access so that they could present a more effective lobby for having these services provided. We have 17 active members who provide supervised access services or are interested in ensuring that such services are made available, and this is a purely voluntary group that receives no outside funding.

Supervised access is an issue that is related to the passage of Bill 124 because both the Children's Law Reform Act and the amendment to it of 1988 specifically state that supervised access is to provide a remedy for the courts in dealing with the enforcement of access.

What we want to point out to the committee and to the government is that these services do not exist and that the government has no policy with regard to the provision of these services, either the funding of it or standards. This creates a great deal of concern for us, and for the courts and the



lawyers and social agencies that are involved in carrying out orders for supervised access.

I will just point out that an informal survey one of our members conducted indicated that most supervised access arrangements these days consist of either home day care providers who have agreed with one or both parents to provide a venue for a visit to take place or, for a lot of children, supervised access is a transfer in police station parking lots. I have a few cases in which that takes place. That is what they call supervision. They take the child to the police station parking lot and they transfer the kid like a piece of meat: "Here you are." That is the supervision.

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Private arrangements that we are aware of are available from various social workers or child care workers or just private individuals starting at \$20 an hour. To us, this means that type of arrangement is available only to those who can afford to pay to see their children. It also leaves open the issue of accountability, because for whom, then, is the service? Is that for the parent who is paying or is it for the child's benefit? We are not quite sure.

The only program we are aware of that receives provincial government funding is a pilot project at Lutherwood in Kitchener-Waterloo. It is time limited and it is the only program that has been funded for the specific purpose of supervising access that is not child-welfare related. So far we have heard nothing about the results of this program or whether it has been evaluated or a time frame for its evaluation, and that leaves us with a lot of concern.

Most of the people contacted indicated to us that their programs were so severely underfunded or that their funding was so unstable that their programs would probably be discontinued.

It has been our experience that most people assume that supervised access services exist. As I was writing this, I happened to glance at the Toronto Star and saw a letter to the editor by Linda Silver Dranoff, who is very well known in the family law field. There it was, stating that the access program at the Lakeshore Area Multi-Service Project was in constant danger of losing its government funding, when in fact that program has never received any provincial government funding. So even people who are in the field assume this program is being provided by the government and is readily available. There are a lot of mistaken ideas out in the professional and lay communities, and I wonder where else.

Statistics available from two of our members indicate that there is an increasing demand for service. The Children's Aid Society of the Region of Peel has two supervised access centres, one in Brampton and one in Mississauga. They were supposed to provide service only for their own children's aid families. What happened was that the demand was so great on them from outside agencies, from the courts and from the legal profession that they started filling in any extra spaces they had with families who were not related to them in child welfare cases, to the point now that 60 per cent of their client population for those supervised access programs are not child welfare families; they are families that are involved in access disputes through the courts and have been referred specifically for supervised access.

Access for Parents and Children, which operates out of the Lakeshore

Area Multi-Service Project, better known as LAMP, which everyone thinks it is called, has been operating in Etobicoke since 1981. They serve an average of 50 families a month. This program, as I have stated before, had such unstable funding that it has almost closed several times—just recently back in December—and is constantly working from hand to mouth because there is no core funding source. The United Way has told the program that it will not provide funding, because most of the referrals come from government sources and therefore it should be a government responsibility to provide the core funding for programs such as supervised access.

As a result of this instability and the lack of ability to expand the program, 44 families were turned away between October 1988 and January 1989. The follow-up the director did on these families indicated that these people went back to court for litigation and then these children were unable to see their parent.

People come from all over Metro Toronto to Etobicoke for this program, from as far away as Ottawa and sometimes even farther away, because no similar services are available throughout the province. As a matter of fact, none of these services that we are aware of is available in the rest of the country.

As an aside, one of our members was at a conference in the United States just recently and presented something about supervised access programs. They thought this was the greatest thing since sliced bread, because they do not have it there either. So this is an opportunity for our province to lead the way in providing services that are in the best interests of children who are faced with these situations.

The social service and child care sectors are struggling to stretch limited resources to meet the demand already created by the current child welfare legislation. Our concern is what will happen if this amendment is implemented and reiterates the use of supervised access as a remedy. The stated purpose of the legislation is to ensure that the best interests of children are served, and to us it behooves the government to make certain that no child is placed in a physically or emotionally unsafe situation just to satisfy legal or parental needs for access, not the child's need for access.

While we recognize and encourage the child's right to a relationship with both the custodial and noncustodial parents, and family members as well, we also recognize that not every parent is capable of providing a safe, secure environment to nurture such a relationship. If supervised access is allowed to develop without direction or standards, as is currently occurring in this province, it is only a matter of time before something regrettable is going to happen to a child.

We cannot state strongly enough that supervised access can be used as a means of negotiating access disputes instead of taking them to court for litigation. It can provide a safe and secure child-centred environment, a controlled neutral location for the transfer of a child for access visits that can be much more fruitful than police station parking lots, doughnut shops and McDonald's and an opportunity for the child and the parent to develop skills for a positive relationship that will enable them to move towards unsupervised access and a more normalized relationship.

We feel very strongly that the government needs to develop and implement policy and programming in this field before enacting legislation that requires such services. If legislators are concerned with the best interests of the child, as they claim to be, then they must provide for the safety and the

security of these same children. So we are asking that quality, accessible supervised access services be made available throughout Ontario in order to serve the best interests of the children. In that interest we make the following recommendations:

1. That the government consult immediately with those currently providing supervised access services in order to obtain a more comprehensive picture of the need for service in our province and a picture of what is occurring in the province.
2. That immediate action be taken to fund appropriate existing services and to develop others throughout Ontario.
3. That the Ministry of Community and Social Services evaluate and release the results of its pilot project as quickly as possible.

On behalf of the Supervised Access Action Group, I invite government representatives to meet with us to discuss creative means for resolving this issue. I thank you for hearing us.

Mr. Chairman: Thank you for your presentation and thank you for leaving some time for questions from members. I have no claim so far. Richard Johnston, would you present your questions.

Mr. R. F. Johnston: Thank you for the presentation. The more I hear from various groups, the more it seems to me that the emphasis we should be placing our work on at the moment is in terms of just what is there in various forms of access facilitation, whether it is strict notions of supervised access or other kinds of options which should be there. I am gathering from what you are saying here that you do not have a clear idea of what is available across the province in terms of the range of things that are available to people now in supervised access.

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Mrs. Newman: No, there has been no official study that we know of that is being done conducted concerning supervised access, although our group is planning to try to implement a province-wide study of supervised access orders and facilities in the province.

Mr. R. F. Johnston: I wonder if you would not mind if instead of my next question to you, I in fact ask the parliamentary assistant if he could let us know if there has been anything done by the Attorney General or by the Ministry of Community and Social Services to get a handle on this at this stage?

Mr. Chairman: Would it be okay to use some of your time for this question?

Mr. Offer: Basically, what we can indicate is that we are obviously aware of the Lutherwood pilot project-type of situation. At this point in time, I believe we are awaiting a response from the Ministry of Community and Social Services as to the experience that they have had in dealing with that. But at this time, we do not yet have that final report.

I might want to ask, whether it might be worth while to have legislative research make that inquiry of the Ministry of Community and Social Services so



that we could be apprised of where they are in terms of evaluating the Lutherwood type of project.

Mr. R. F. Johnston: That was my thought exactly. We chatted briefly about that. I think that would be useful. I think your point is well made. Just as a comment, which you can respond to if you wish, I am kind of blown away that we have virtually no studies on what is going on in terms of access problems at the moment, yet we are coming forward with legislation. We know of a couple of models that have worked, especially the Lakeshore Area Multi-Service Project, over the years.

Rather than having a major expansion there in terms of helping people deal with their complicated problems, as we are learning now, we instead are rushing into legislation which, from what I am hearing, is not pleasing anybody out there, from one side or the other. Yet we have done no studies of that. I am just kind of surprised at this approach we are taking.

Mrs. Newman: So was I when I became involved in this area. I happened to become involved in it through working with a client who required supervised access; that is how I became involved in the whole process. It astounded me because I also had assumed that these services were available. Courts were ordering them, so therefore they must be there and they must be properly supervised and staffed and everything else. I was also astounded about the ad hoc nature of supervised access in the province.

My concern about the Lutherwood Project, or our group's concern about the Lutherwood Project—and Carol might comment on this—is that every community's needs are different. The experience that Lutherwood is having may be very different in a rural setting—well, it is not rural, but it is not as urban as Metropolitan Toronto. The issues there may be very different from the ones facing the Metro community or other communities throughout the province, even in northern Ontario. So I would be loath to generalize from one study about the nature of supervised access programs. I often wonder why no one has consulted or used the LAMP program in Etobicoke for study.

Mr. R. F. Johnston: Me too. I have been actually trying to get that one done since 1981, so I wonder too.

I cannot help but surmise that what we have here is a problem with jurisdiction between the Ministry of Community and Social Services and the Attorney General. It is mandated under the AG's legislation that supervised access orders can be given. I think the AG's office probably wants the Ministry of Community and Social Services to deal with it and they do not want to because of their budget problems. Because of that, we are coming up with a piece of legislation to legislate a problem which should be dealt with in service. That is my guess about what is happening here.

Mr. Daigeler: I take it you are involved in the actual delivery of this supervised services route or are you just an advocacy group?

Mrs. Newman: We are an advocacy group, but some of our members are directly involved in the provision of supervised access, such as Peel and the access program at LAMP.

Mr. Daigeler: Could you describe this a little bit for me? I have no experience with this at all, how it actually works. Could you give some concrete examples?

Mrs. Newman: Of supervised access?

Mr. Daigeler: Yes. Through the people you are in touch with, how is that currently happening?

Mrs. Newman: In a supervised access centre, if there—

Mr. Daigeler: Or whichever way the supervised access happens.

Mrs. Newman: What happens is that either the court or a social agency such as the family court clinic will recommend that the access or the visit between a parent and a child be supervised by someone, and it is up to the court or the parties to determine what kind of supervision and where it should take place.

Mr. Daigeler: That is what I am interested in, where and how, the actual surroundings.

Mrs. Newman: Okay. I can give you an example of the access program at the Lakeshore Area Multi-Service Project. The access program consists of a recreation room in a multi-service centre, a community centre that is located on the Lakeshore in Etobicoke. The visiting parent, the noncustodial parent, will come to the centre at a specific time for a specific visiting period. The custodial parent will bring the child to the centre and the child will be taken to the playroom. There are other families there. There are toys available in the room. There is a playground available outside.

Mr. Daigeler: The visit takes place at the—

Mrs. Newman: At the centre.

Mr. Daigeler: Is this always then in a centre, or can it be in family surroundings?

Mrs. Newman: Yes, it can be in family surroundings as well. That is what I am saying. The nature of the supervision is determined by the individual situation. You cannot make a blanket statement that all supervised access must take place in a supervised access centre or that one type of centre is best in all cases.

The long and the short of it is that there is no policy. There are no standards regarding supervised access or a definition of what is supervised access. It is left open to a lot of interpretation.

Mrs. O'Neill: I would like to ask you a little bit more about the supervised access environment. I am gathering from what you are saying that some of the people involved in it, if it is in the homecare program, for instance, would be volunteers.

Mrs. Newman: Yes.

Mrs. O'Neill: At these centres, are these people paid? You are saying there are no standards. There is a breadth of people who do this kind of work then. Is that what you are suggesting—some paid, some unpaid?

Mrs. Newman: Yes.

Mrs. O'Neill: Some with a little bit of training, some with none.

Mrs. Newman: Some have training, some have no training. It is just catch-as-catch-can. It depends on the centre or the facility. Maybe Carol can comment on that.

Miss Rawson: I am involved in a program that has yet to materialize, but I have been doing a lot of research and work with the action group as well as visiting programs. The program in London was run by a staff person who was attached to Merrymount Children's Centre, with summer students hired through grants, high school students and/or college and university students, who are, I am sure, sensitive, well-meaning individuals, but there was no indication of any particular kind of criteria or training involved.

The program in Peel works with children's aid. The primary person who oversees all of the functions of the program, to my understanding, is a paid staff person. Most of the other individuals are, again, just volunteers, who are important people in any kind of children's services program. The questions around professionalism, the ability to present in court, if that were necessary out of issues arising, are not addressed in staff training.

Mrs. O'Neill: Do these people interact in the situation between the parent and the child? What would their role be in that centre? Do they set up programs? I am having difficulty. I have never had any contact with this situation. You get a court order for supervised access. I presume there must be some people who would appeal that; they would want to see their children alone. Correct?

Mrs. Newman: Yes.

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Mrs. O'Neill: The appeal is lost, so these people must go to a certain location that has been agreed upon and accepted by the court. Is there a third party in contention or is there a third party presence? I guess I am asking for the basic fundamental principle, and I presume that even changes from what you have said. Is it often that there is an interaction between these people and the parents or are they just wandering through the environment?

Mrs. Newman: I have experience with only the centres I have seen. If you are just going to a play group or having a home day care arrangement with your day care provider or something, I do not know what happens there.

At the access program, there is a trained social worker there with the volunteers and a couple of other staff people who are not trained in social work or child care; they are just on staff to be there to wander about, supervise, make sure that nothing inappropriate happens, make sure that parents do not say anything to a child that would be harmful emotionally, make sure that a parent does not walk off with the child from the playground. Sometimes if a parent is not playing properly with the child or is not doing anything and is just sort of sitting back, they will approach and suggest different activities that a parent might do with a child to help him learn to interact with the child.

Mrs. O'Neill: It sounds like very demanding kind of work that would involve a great deal of knowledge and sensitivity if it is done properly.



Mrs. Newman: I believe so. Unfortunately, it is a one-man band in most of these places.

Mrs. O'Neill: I thank you very much for trying to help me understand the situation better.

Mrs. Newman: I hope we have been helpful.

Mr. Chairman: It has been most interesting. Thank you for coming before the committee and sharing your experience.

Our next group is Mothers Without Custody, and representing them is Carol Fetherston, co-ordinator.

Ms. Fetherston: I have left on your desk a copy of a brief that I have prepared.

Mr. Chairman: I am going to turn things over to the vice-chairman for this portion, if you will just give us a moment.

The Vice-Chairman: We are going to begin now with Mothers Without Custody. Carol Fetherston is our presenter and you will have 30 minutes to make your presentation, which will be divided according to your own judgement regarding presentation and questions. We have reminded each person who has appeared before us that, of course, there is a risk in using anything that would be involved in a court challenge at this particular moment.

#### MOTHERS WITHOUT CUSTODY

Ms. Fetherston: I would like to start by giving you a little bit of background to Mothers Without Custody. I am a noncustodial mother. About three years ago I heard about an organization in the United States called Mothers Without Custody. It is a very large organization and I applied to be the Toronto co-ordinator of this larger group.

For about three years now I have had meetings in my home once monthly with noncustodial mothers and over this period of time I have run into approximately 25 noncustodial mothers. In meeting in my home, we have over a period of time begun to see certain themes reappear. We have all noticed that it is difficult to adjust to being a noncustodial parent. We have had difficulties getting things like report cards and medical information. We have simply found it difficult to adapt to this new role.

One of the things I did encounter, though, was women who did have access difficulties. I was quite surprised myself at the extent to which access difficulties did occur. As a group, we tried to support and help each other. Those who had been through the court system and had a little bit of knowledge and information tried to support some of the other women. We found that many women simply had no redress in the current system for access difficulties.

Many of them did not have lawyers. They were working, but they were making such low incomes they could not afford legal help and yet they were not low enough that they could qualify for legal aid, so many of them had simply given up in despair and were unable to help themselves. Again, we tried to help each other. We tried to get some court actions going. Some people tried to do some of their own legal work, trying to get the ball moving, but again because of the complexities of the court system we were somewhat limited in what we could do to help some of these mothers.

I strongly feel that some kind of recognition of access difficulties and access legislation is very necessary. However, I do have some difficulties with Bill 124 and I would like to point out some of the difficulties I have and why.

Clauses 35a(2)(d) and 35a(6)(c) deal with the appointment of a mediator. It is unclear in this bill what the appointment of a mediator means. I am a strong believer in mediation. However, I know there are limitations to what mediators can do when both parties do not want to co-operate. I am wondering whether this bill—it is very vague—is simply going to appoint a mediator if both parties choose to have mediation or whether the mediator would be appointed to act in an assessment way, to review the whole situation and then make recommendations in which further arbitration could be imposed.

My feeling is that people who are having access difficulties would not be able to mediate, simply because they would not have these difficulties in the first place if they could co-operate. I would like to believe that the courts would have the power to appoint a mediator to thoroughly investigate the situation, especially with some of the difficulties as outlined in section 35a, where there are a number of reasons for access denial.

These reasons should be clearly investigated, because I think there is a great potential for abuse here. That is my major concern, that certainly when one has these problems and gets in front of a judge and he is unable to ascertain whether these are real problems, the mediator should have the power to thoroughly investigate and make recommendations to the courts.

Speedy hearing and oral evidence: As I explained earlier, many noncustodial parents—and I do not mean mothers; I have also run into fathers with the same problem—are simply unable financially to retain legal counsel. I have run into that problem personally. I spent thousands of dollars and I simply reached the end of the limits where I could afford legal help.

I think it is important, if justice is to be done, that people without legal help be able to come to the courts and have some kind of court-based legal service provided which could start them on the process to get them into court, to get a mediator appointed or to get some kind of help. Right now, that service is not available. If people have problems, for instance, with support they can go to the support and access branch and they will be helped along in the process. People who are in the court system are initially very frightened by it. They do not know much about it and they need a great deal of support in this regard. Again, I have some difficulties. It is nice to have that bill in front of you, but where do they go with it in terms of getting the ball rolling?

Financial hardship: This is the section where the court may order a mediator and the person who has the most money would pay for the costs. I have objections to this because I think, in talking to most mediators, they would be reluctant to mediate under these terms. If mediation is to be paid for privately, each party should pay some of the costs according to ability to do so. There is a greater incentive to co-operate with mediation when both parties have contributed financially. I think if you speak to them, most mediators will acknowledge that; they find that if somebody does not pay for mediation, they are less likely to co-operate.

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Section 35a, application within 30 days: Although application for relief

of access denial would likely occur within the majority of instances within 30 days, there are certainly cases in which this may not happen for very legitimate reasons. The noncustodial parent's role is a fragile one and I have known of cases in which such parents have lost the ability to fight back after repeated access denials.

Noncustodial parents are also vulnerable to dropping out of their children's lives if they lose confidence in their ability to have any impact as a parenting figure. This frequently happens when a noncustodial parent fails to exercise his or her access rights. I have known of cases where this pattern has changed when outside support has helped to rebuild the noncustodial parent's confidence that he or she does have a role to play in the children's lives. Often a period of time passes before the noncustodial parent has found the emotional strength to regroup forces.

Until access enforcement is taken seriously from the initial stages, there must be some mechanism to recognize those cases that have fallen through the cracks in the system. Leeway must be allowed for extension of the 30-day application in such cases.

The section on domestic violence: While on the whole I applaud the recognition of domestic violence in assessing a person's ability to act as a parent, I also hold certain reservations around this section of the proposed act.

Research on domestic violence is fairly recent—most research has been done since the opening of women's shelters in the 1970s—and there still remains a great deal of controversy over the dynamics and extent of domestic violence. I personally do not condone violence on any level. However, I feel that it is important to distinguish ongoing patterns of violence from incidents which may occur as a result of conflict escalation around the time of the breakup. Research has shown that cases of ongoing domestic violence have many similar characteristics. The most obvious feature is the need for control, which also manifests itself in such behaviour as total control of finances, isolating the spouse from friends and family, destruction of personal property or pets, and constant emotional demeaning of the spouse. If these patterns occurred in the past, it is important to protect both the spouse and the children from the continuation of such behaviour.

I am concerned, however, that isolated incidents, especially those in which both parties have been involved, which may arise around the time of the breakup could be used by the custodial parent to deny future access. There is no reason to believe that such behaviour will necessarily recur after a period of separation in which tempers can cool. I feel that the use of the phrase "at any time" must be seriously addressed to prevent abuse of this section of the act.

Last, reimbursement of expenses: Judges are now reluctant to order the custodial parent to pay fines for contempt of court when access is denied. They believe that as a result of such an order the children will be negatively affected. It could be similarly argued that the posting of bonds or the reimbursement of expenses would also impact negatively on children financially.

I make this point very strongly, and it has taken me a long time to come to this point but I do believe this very strongly, having dealt with women who had access denial problems; I do know the pain they go through. I personally never experienced them, but I have experienced telephone access problems and I know how painful that was. People who do not see their children really do go



through hell. So I am going to say this, and I realize it sounds very draconian, but I mean it.

Access denial causes a great deal of emotional pain to the noncustodial parent and, I believe, to children. It must be impressed upon the custodial parent that contempt of court is a serious matter. In those intractable cases where all attempts at enforcing access have failed, judges should seriously consider weekend jail sentences to offending parties and place the children in the care of the other parent. It is hoped that this measure would be a last resort and that there would be every effort made to resolve these difficulties through such means as mediation and counselling.

I feel that the current attitude towards access denial tends to downplay the seriousness of such behaviour. To lose a relationship with one's children is one of the most profound losses a human being can experience. The ordering of jail terms is a recourse which is currently available to judges for contempt of court violations. Their reluctance to impose such a sentence for habitual access denial must be seriously questioned.

I have one little addendum. How is my time here? Am I okay?

The Vice-Chairman: You are fine.

Ms. Fetherston: I have added this addendum because these thoughts have been on my mind for a few years now. I have included it primarily for feminists, male or female, because politically I have been involved with feminists and fathers' rights groups. I have called it Feminism and the Fathers' Rights Movement. It is not too long, but I would like to share these thoughts.

Lastly, I would like to share some thoughts over the polarity of views on the issues of custody and access expressed by feminists and fathers' rights groups. To begin with, I consider myself a feminist and I am in agreement with many of the ideas that feminists put forward for social change. However, when it comes to issues such as custody and access, I feel that the feminist positions are more concerned with maintaining maternal privilege than they are with seeing justice done. Feminist leaders tend to minimize the extent of access violations and are too reluctant to admit that many custodial parents abuse their power over their children.

On several occasions I have tried to speak to feminist leaders about the problems that noncustodial mothers face and I have encountered denial, apathy and even hostility. I believe this is because noncustodial mothers force feminists to confront the basic injustice of the fact that the custodial parent has most of the rights, noncustodial parents few.

These problems cannot be reduced to simple male/female ones. Noncustodial mothers force feminists to look at the question, "If we deny rights to noncustodial fathers, are we not then also penalizing noncustodial mothers?" One feminist lawyer from Toronto who is a well-known advocate for battered women dismissed my concerns on one occasion when I spoke of my desire for joint custody, saying, "There's nothing we can do for noncustodial mothers."

We cannot be dismissed that easily. Although we may not be politically vocal as a group, there are presently approximately 150,000 noncustodial mothers in Canada. You do not hear about them much, because there is a lot of social stigma around being a noncustodial mother so they do not come out of

the woodwork, and they do not talk about it. But they are out there: 15 per cent of parents are noncustodial mothers and 40 per cent divorce cases. So there is a significant number. There are indications that this number is growing.

Feminist leaders speak frequently of the desire for choice. Surely a woman who is divorced should be able to make the choice that her children have primary residence with their father without having to give away all her rights as a mother. There may be many valid reasons why a woman may choose this course of action: for example, a desire to get on her feet financially, return to school or pursue career goals. She may also believe that having her children remain in the matrimonial home with the father provides the children with stability and continuity of care.

I believe that more women might consider this course of action if they could retain parenting rights through joint custody and generous, guaranteed access. Feminists have encouraged fathers to participate in their children's lives to a greater degree before divorce. It is inconsistent to expect them to participate minimally after divorce. Too many sole-custody mothers are overburdened as a result. Feminists must seriously reconsider their position on these issues.

Patricia Pascowicz, in her book *Absentee Mothers*, sums up strongly my own personal philosophy in this regard:

"I will not repeat the familiar, correct feminist rhetoric that refers to industrialization, capitalism and patriarchy as having created the unnatural isolation of mother and child: it is almost beside the point now. The logical assertion by the absentee mother that what she is doing should not be regarded as wrong for her when it is perfectly all right for men is confronted by the realistic consideration of the fact that, almost invariably, children have come to depend too completely on their mothers for essential emotional closeness as well as day-to-day care. Even those who believe that nurturing can be and ought to be provided by both parents ask how we can dismiss that serious responsibility, even equipped as we are with humanistic justification and a logical philosophy. How can we do it knowing the situation that exists? The needs of our children, now, surely must supersede our own needs or the changing of society.

"My first response to this question is irritation with what I feel to be the stubbornly masochistic determination of even the most aware feminists to continue co-operating in their own oppression." I concur. "Put a child in front of them, tell them that they will be the sole source of that child's emotional nutrients and physical care, and regardless of the exploitation and oppression they know this represents, they will proceed to do what everyone has come to count on their doing. Many of us feel that the pattern must be broken."

Thank you.

The Vice-Chairman: Thank you very much. Are there any questions from members of the committee?

Ms. Poole: Thank you, Carol, for a very sensitive brief today. We certainly can sympathize with what you have gone through. We have heard both sides of the coin in the last few days of hearings. If you were here this afternoon—I think you did arrive early—you probably heard several briefs by the women lawyers and associations such as the ad hoc committee, where they

said there was no need for this legislation. On the other hand, we have heard a number of presentations that say Bill 124 does not go far enough.

One of the problems we have faced as a committee is that there seems to be very little empirical evidence one way or the other, statistics on how many access cases have problems that end up in the courts, what percentage of access orders are not followed and this type of thing.

In your anecdotal experience, could you perhaps confirm for us what you feel? Is there a need for this legislation? From your brief, I certainly see a certain tendency—

1650

Ms. Fetherston: Yes, definitely. I only work with about 25 women, and of those 25 women, I encountered probably six who had access difficulties to varying degrees. One woman had not seen her children for over a year. There are similar kinds of stories I hear fathers' rights groups saying. They had gone to pick their children up and: "They're at their grandparents. Sorry," or, "I made arrangements and the arrangements fell through at the last minute," this kind of thing.

Yes, it does happen. I believe the problem is not a male-female one. I think it has much more to do with custodial-noncustodial parent and the power the custodial parent has to abuse the privilege of having custody.

Mr. Chairman: I have a question. You mentioned that you knew of some cases where there was a problem with access. Was this a case where access had been determined by agreement or court order and was not being followed through on? Because that is what this bill is trying to address.

Ms. Fetherston: Yes. There was one case where it was very vague: it was sort of liberal access, that kind of thing. But yes, in the majority of cases, there had been a predetermined access agreement.

Mr. Chairman: So there was agreement on access, and the access was not being executed.

Ms. Fetherston: That is right.

Mrs. Cunningham: I appreciate your observations. You really have painted a very real picture for us. You were here earlier, I think, and heard some of the submissions. One of the complaints by some of the solicitors who came before the committee was that this would be an even more expensive piece of legislation for parents, in that you could probably go back to court. It was meant to speed up the process. It was meant to give more access where it was earned and where it was rightful. Looking at this bill and looking at some of your observations—"How do you afford these lawyers all the time if something goes wrong?"—do you think this piece of legislation is going to make it easier or faster or less expensive?

Ms. Fetherston: As I mentioned, I think the intention is right, but I have problems: Where do you go when you have access difficulties and you do not have a lawyer and you want to get this to court to have a hearing or investigated? How do you begin the process? As I said, in support groups we can often help each other; you go down and get copies of documents, you go to Grand and Toy and you do this. We are trying to do our own legal work, but I am not sure that somebody who does not have that kind of support and help



could use this bill, unless there was some kind of service provided to help them get things on their own.

Mrs. Cunningham: My greatest fear is that we might be making a promise here that we cannot keep.

Ms. Fetherston: It is a logistical difficulty.

Mrs. Cunningham: Given the input we have had before the committee, what we want to happen and what will happen because of it---It may just be another piece of legislation that has unrealistic expectations.

Ms. Fetherston: I am amazed at how many people are in a position where they cannot retain legal help or they have had legal help and have gone through the process and spent a great deal of money. I have gone through personal bankruptcy over legal fees. I have known of other people who have done the same. It is not unusual.

Mrs. Cunningham: Have people in your group or yourself had the opportunity to be part of unsupervised access programs?

Ms. Fetherston: No.

Mrs. Cunningham: In speaking to the two or three solicitors in London who do this kind of family law, they were very pleased with the opportunity; in fact, often on the phone they would recommend another supervised visit with the counselling. It did keep their clients out of the courts and it was in the best interests of the children. Of course, we have heard that before us today. I thought that if you had had that experience you may have had more things to tell us.

Ms. Fetherston: No; I have not had anybody who was working with a supervised access situation.

I basically believe that we should go down a step kind of process, starting with an attempt at mediation and counselling. If that fails, obviously, there should be some court-ordered recommendations and then if that fails, as I say, would be my last one, which may be a reversal of custody or weekend prison terms. I do not know. Somehow I believe very strongly that contempt-of-court orders must be readdressed. One should not be able to go on with impunity.

But no, I have not had anybody who dealt with supervised access.

Mr. Chairman: Thank you very much for your presentation and for taking the time to come here and share with us the benefit of your experiences.

Our last presentation of the day is from Mary Hutcheon. Welcome to the committee.

Ms. Hutcheon: My name is Mary Hutcheon.

Mr. Chairman: Before you begin, I would mention to you that you have 15 minutes to divide between presentation and questions as you see fit. I would caution you against making reference to personal matters which may or may not be the subject of a court hearing or could end up in court. That is for your protection. We are protected under the rules.

Ms. Hutcheon: Nothing is in court, I can assure you.

MARY HUTCHEON

Ms. Hutcheon: I am a grandparent. My son is divorced and is deprived of his two daughters, aged seven and six years, by a psychologist named Irwin Butkowsky, who feels it would be better for my son not to have access to his rightful children because of the mother's abusive and manipulative ways towards her daughters after visitation rights with their own dad. She tells the children he is a bad man and he is not their daddy. As far as I am concerned, that is manipulating and destroying a father's real love and the love of his family.

We are flesh and blood but deprived on my son's side. These children will never know their medical history, their aunts, uncles, cousins, grandmothers, their rightful blood line. It is a violation of our rights as parents and grandparents to be deprived, yet her mother is with the children constantly. My ex-daughter-in-law's name is Virginia. She has been very abusive towards my son and myself. She receives payments of \$1,100 monthly. So financially she is not suffering, plus she rents out her basement and works and collects baby bonus. She is doing better than my son, who is a Metro Toronto policeman.

There should be a mediator to arrange visitation rights. Is it not strange that children can visit seniors' homes to give a lift to the elderly and yet I and many more like myself have to be deprived of their blood relatives? I am sorry this woman is an absolutely unco-operative person and I am sure she needs counselling.

I have worked on dolls, mainly when I thought I was going to be getting access to the children. I started dressing dolls and buying up dolls and dressing them. I have now 270 dolls in my home for grandchildren whom I do not see and never will. I wanted to have something else besides love and caring and my emotions to share with my son's daughters. I find he himself is deprived and hurting emotionally very badly. He refuses to talk about the children as he has said to me it is a very sore spot in his heart to have two children and yet not have two children.

It has cost my son two lawyers' fees and the fee of Irwin Butkowsky, the psychologist, all to no avail. He cannot afford legal fees continually plus his parental fees monthly and be able to live financially. I have to admit—not because he is my son—that he is bright and is a loving, caring son and person. I help my son financially as I can, as I cannot see him suffer when he is paying out so much alimony, not only because of alimony, but being deprived of his rightful children.

1700

When he did have access, she saw fit not to be home, not to answer the phone. You are hitting against a brick wall. My son was driving in from Hamilton and not getting access, finding out she was not there. Something should be done to punish her for her actions.

I do hope the courts see fit to rectify these problems that a lot of us seniors are facing at this stage of the game, when we should be happy and contented with our last days on this earth. We do not want lawyers, psychologists or judges who are not understanding. We would like a mediator to get us access without a lot of hogwash. Months and years are passing by and nothing is being done.

That is what I wrote.

Mr. Chairman: Thank you very much for your presentation. I am sure it must be difficult for you to come before a committee like this and share with us your personal feelings on the experience you have had. Did you want to add anything informally?

Ms. Hutcheon: Yes. My son's wife was very determined that he would never see his children. This is her way of hurting him. He did have access through the courts, but she has made it a point of not letting him have any access at all.

Now, \$1,100 is not just a little bit of money to pay out every month and not be able to see your children. If he was an abusive man—she has said all sorts of things, but she is falsely saying them—I could see her depriving him, but he is an honest person and he works. As I say, he is a Metropolitan Toronto policeman and he commutes back and forth from Hamilton to Toronto. It is very heartbreaking for him and for me, as they are the only grandchildren that I have.

Mr. Chairman: In the situation you described, does he have legal access through an agreement?

Ms. Hutcheon: He did have access through the courts.

Mr. Chairman: But not any longer?

Ms. Hutcheon: The thing is, he would phone his lawyer and say: "I went to pick up the kids on Saturday and she wasn't home." What can the lawyer do? What is he going to do?

Also, it was stated that her mother and she both said that the only thing he did was plant a seed and that his ex-wife should find another man and that these children should have another father and not him. The children were with the psychologist and said that he is a bad daddy because the mother told them to say that. The psychologist picked that up very readily.

Mr. Chairman: Do any other members of the committee have questions?

Ms. Poole: As the chairman mentioned, we can appreciate that it must be very painful for you to go through this. I wonder if you have had an opportunity to look at the bill that is before us, Bill 124, or if you understand what it is about.

Ms. Hutcheon: There really is not much in there as far as access for grandparents, is there?

Ms. Poole: No, but it is talking about access for court orders. So if your son did have the court order—that is what I am trying to determine. With your son having the court order, would this bill help him, in your opinion?

Ms. Hutcheon: No, I do not think so, because my son refuses to pay another dollar to another lawyer. He is not going to fight it any longer.

Mr. Chairman: Have you considered seeking access yourself? Under present legislation—



Ms. Hutcheon: No, because if she feels the way she does towards my son, she feels exactly the same way towards me. Now, I could go into oodles of things that she has done to me—

Mr. Chairman: I do not think we need to know about that.

Ms. Hutcheon: —but I do not want to go into all those things.

Mr. Chairman: I know the parliamentary assistant has said that his interpretation is that any person, whether a grandparent, aunt or anyone, can apply to the court for rights to have access. You have not considered doing that.

Ms. Hutcheon: No, I will not spend that kind of money to get legal advice, because I feel that I have gone through a lot too with this whole thing.

Mr. Chairman: I understand. Mr. Jackson.

Mr. Jackson: To put that another way, did you ever present yourself at your ex-daughter-in-law's residence to receive the children on behalf of your son?

Ms. Hutcheon: No way. I would be terrified to go there, for the simple reason that right from the beginning, she just never liked me. My money was good when they wanted a handout—

Mr. Jackson: Okay, that is fine. Then, if this legislation were passed and you had access, would you still be frightened to go?

Ms. Hutcheon: Yes, I would.

Mr. Chairman: Thank you very much for taking the time to come down here and share your views with us.

Members of the committee, that completes our list of delegations for today. We are scheduled to meet again tomorrow morning at 10 o'clock in the Amethyst room. Please try to be on time.

The committee adjourned at 5:06 p.m.

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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHILDREN'S LAW REFORM AMENDMENT ACT

TUESDAY, APRIL 11, 1989

Morning Sitting

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Neumann, David E. (Brantford L)

VICE-CHAIRMAN: O'Neill, Yvonne (Ottawa-Rideau L)

Allen, Richard (Hamilton West NDP)

Beer, Charles (York North L)

Carrothers, Douglas A. (Oakville South L)

Cunningham, Dianne E. (London North PC)

Daigeler, Hans (Nepean L)

Jackson, Cameron (Burlington South PC)

Johnston, Richard F. (Scarborough West NDP)

Owen, Bruce (Simcoe Centre L)

Poole, Dianne (Eglinton L)

Substitutions:

Cousens, W. Donald (Markham PC) for Mrs. Cunningham

Farnan, Michael (Cambridge NDP) for Mr. Allen

Offer, Steven (Mississauga North L) for Mr. Beer

Clerk: Decker, Todd

Staff:

Swift, Susan, Research Officer, Legislative Research Service

Witnesses:

From the Ontario Association of Interval and Transition Houses:

Morrow, Eileen, Vice-President

Fraser, Kim, Regional Representative

From the Barbra Schlifer Commemorative Clinic:

Fassel, Marylou, Legal Services

From the North York Women's Shelter:

Gold, Lee



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Tuesday, April 11, 1989

The committee met at 10:10 a.m. in room 151.

CHILDREN'S LAW REFORM AMENDMENT ACT  
(continued)

Consideration of Bill 124, An Act to amend the Children's Law Reform Act.

Mr. Chairman: Ladies and gentlemen, members of the committee, this is a meeting of the standing committee on social development convened to consider Bill 124, an Act to amend the Children's Law Reform Act. We are receiving deputations all day today.

Our first presentation will be from the Ontario Association of Interval and Transition Houses. Representing that organization: Eileen Morrow and Kim Fraser. Welcome to the committee. You will have one half-hour for your presentation. You may use all of the half-hour for presentation or you may save some time for committee questions if you wish. We would caution you against making reference to specific cases which may be before the courts or which may appear before the courts. Please introduce yourselves.

ONTARIO ASSOCIATION OF INTERVAL AND TRANSITION HOUSES

Ms. Morrow: Thank you very much for the opportunity to come and make this presentation to the committee today. My name is Eileen Morrow. I am the vice-president of the Ontario Association of Interval and Transition Houses, OAITH for short. Beside me is my co-presenter, Kim Fraser, who is a regional representative for the Ontario Association of Interval and Transition Houses. We will be making a presentation and I hope we will have some time left for questions.

Before I begin, I could not help but notice that there a number of individuals, mostly men, who have asked for time to speak, presumably about situations in which they have been denied access to their children. We know thousands of battered women who would love nothing better than to be able to come here and speak with you if they felt safe to do so. I know you will understand the difficulties facing abused women in telling their stories directly to a televised public hearing. I hope, however, you will keep them in mind during this presentation, for they are with us in spirit.

We are here today representing a total of 68 interval and transition houses throughout Ontario which sheltered well over 77,000 women and children in the past five years. During these years the staff of these shelters have spent thousands of hours counselling and supporting women who have arrived at our doors in search of safety from violence for their children and themselves. We have accompanied them to courts, sat through long hours listening to lawyers defending violent husbands and recommending to judges that a man's violent behaviour does not affect his ability to be a caring father and role model who should have full and free access to his children.

A nationwide study by the Canadian Advisory Council on the Status of Women, written by Linda MacLeod in 1987, shows that 44 per cent of battered women are assaulted at least once after separation or divorce. In fact,

separation frequently means an escalation in violence as the batterer no longer has his victim under control.

In the shelters, we see at first hand how violence dominates the lives of women and their children. Assaulted women are often isolated, intimidated and ultimately unprotected from further violence because society fails to initiate controls that would protect them against further attack. We also know from our own statistics that criminal charges are laid in only 20 per cent of the cases of women who seek shelter safety with us.

Women tell us of threats and fear. They tell us of how their partners have undermined their parenting and influenced their children. They tell us how their partners have abused their children. So we have come here to raise serious concerns about Bill 124. We speak not only on behalf of the 8,221 women and 9,374 children we sheltered just last year, but for the many, many more women and children in this province who are victims of abuse and intimidation. We are joined by many prominent family court lawyers who also oppose this bill because (1) it is largely unnecessary, (2) it puts abused women and their children at risk for continued harm, (3) it will clog an already burdened justice system, and more.

This bill is largely unnecessary. When this bill was originally introduced as Bill 60, the accompanying explanatory notes explained that as a result of the Support and Custody Orders Enforcement Act it was necessary to regulate access availability for fathers who are now forced to pay support for their children as noncustodial parents. In other words, if he is paying for them he has a right to see them, as though children were not only pawns but commodities. Those explanatory notes were subsequently recanted by Attorney General Ian Scott, but their bad taste remains. In fact, last Friday Michael Cochrane from the AG's office virtually duplicated the "if he's paying for them" argument at these very hearings to explain the origins of the bill, thereby contradicting the heavily emotional comments of Steven Offer, the Attorney General's parliamentary assistant, that the focus and foundation of this legislation is to serve the needs of children wrongly denied their right to parental love and guidance.

While evidence does show a serious problem with denial of support payments—custodial parents had to wait until there was an 85 per cent payment failure rate before support was enforced—the Attorney General has not been able to produce any corresponding hard evidence to substantiate claims that access denial is a problem for a large majority of noncustodial parents in Ontario. This is because no such research is available and the government has not undertaken any. Mr. Cochrane said on Friday that even the bar has indicated that it gets few complaints about the problem, and he implies this is due to noncustodial parents giving up.

It is puzzling that such committed parents would give up before they have even seen a lawyer. Until then, presumably, they would not be fully aware of their legal difficulties. We suggest that a more reasonable explanation why lawyers do not see many of these complaints is that they are simply not that numerous. Moreover, where serious access—denial problems do occur, there are already provisions in family law to address the situation, and even compensatory time is currently ordered by judges.

Section 35a, wherein the denial-of-access remedies are added to the Children's Law Reform Act, is simply not needed.

This bill puts abused women and their children at risk of continued

harm. By the ~~duty-of-separated-parents~~ clause in subsection 20(4a), Mr. Scott would have us believe that it is always in the best interests of the child to have a continuing relationship with both parents, in spite of the domestic violence clause which occurs later in the bill. Recent research conducted in the United States, however, calls such an assumption into question. The Center for the Family in Transition in Corte Madera, California, has published a series of research studies which sound strong caution against the mandating or enforcing of access where parents are in ongoing dispute, and regardless of the level of parental conflict, the more often children had contact with both parents in these situations, the more problematic was their level of adjustment.

We also wish to draw your attention to the research published by Professor Frank Furstenburg, Philip Morgan and Paul Allison, sociologists at the University of Pennsylvania. They examined whether children in disrupted families generally fared better when their noncustodial fathers maintained an active presence in their lives. They reported that their results provided little if any support for the hypothesis that such contact is beneficial to the child. To quote Professor Furstenburg:

"This topic surely merits more careful consideration by researchers and policymakers. It is disconcerting to discover the weak evidence for an almost commonplace assumption in popular and professional thinking: that children in disrupted families will do better when they maintain frequent contact with their fathers. In the absence of better and more convincing evidence, policymakers rely on conventional wisdom that is, unfortunately, an unreliable guide for social reform."

Research on the effects of witnessing violence on the children of violent men would indicate, however, that it is in the best interests of the child to discourage the ongoing parental relationship in these cases. According to Dr. Peter Jaffe, an expert on domestic violence at the University of Western Ontario, child witnesses of wife assault experience serious behaviour and adjustment problems, including deficits in school competence, aggression, anxiety, depression, poor peer relationships, a tendency to condone violence as a problem-solving technique, exaggerated feelings of responsibility for their parents' safety and distorted views on the relationship between men and women; in fact, virtually the same, if not more, problems experienced by child victims of direct abuse and neglect. In short, wife assault is child abuse.

Abusive partners are very poor role models for their children. Their use of violence, their exposure of their children to witnessing their violence, their derogatory attitudes to women—these are only some expressions of the lack of moral judgement and personal control which militate against their ongoing parental role. It is now common knowledge that violence in the marriage partner is not a marital breakdown problem or the result of provocation by the victim. Separating the couple does not stop the assailant's violent behaviour or his violent role-modelling for the children. As we have mentioned, in a very high percentage of relationships, violence against the mother continues even after separation.

1020

I direct your attention to the back pages of this brief, the blue pages, and ask that you look at the pictures there. These are pictures drawn or coloured by children in shelters during talks with counsellors about their family. When you are deliberating on this bill, please ask yourselves if the



children who made these pictures would benefit from an ongoing parental relationship with their abusive parent.

Beyond the damage caused by wife assault witnessed by the children, an abusive partner may be predisposed to direct child abuse as shown in several studies. Linda MacLeod's study, for example, showed that in Canada 48 per cent of the children of women who stayed in emergency shelters were emotionally abused by their father while 26 per cent were physically abused and seven per cent were sexually abused. Nine per cent of the abuse of these children occurred daily and 28 per cent weekly. Clearly, spousal assault is detrimental to children. Visitation, if it is allowed, must be arranged to protect both children and abused spouses from further harm.

Clauses such as the duty clause, however, compel an abused woman whose child faces potential abuse to remain silent about her fears of abuse against both herself and her child in order to appear co-operative and show that she is encouraging an ongoing parental relationship. This situation is already causing untold harm to women and children as a result of the friendly parent rule in the federal Divorce Act, a clause which is very reminiscent of this duty clause. Women are already being forced to remain silent about not only their own abuse but suspected physical and sexual abuse of their children in order to prevent a finding that they are "unco-operative" parents. When they do courageously disclose the abuse, they are often accused of lying to punish their ex-husband.

The duty clause then puts women and children at further risk of harm. For this reason, we object to its inclusion as subsection 20(4a) of the act. If this statement remains, it should at the very least be qualified by exceptions to that duty, specifically in cases of wife assault and child abuse.

Domestic violence to be considered: We were pleased to note that subsection 24(3) acknowledges commission of violence as a factor in parenting ability and makes it mandatory for judges to consider it. This acknowledgement is long overdue. As we have noted above, violent behaviours do not provide positive and nurturing role-modelling for children and in fact are damaging to them.

While we applaud consideration of domestic violence in custody and access matters because of this, there are still serious problems with this clause as it now stands. The principal problem with it is its contradiction of the duty clause and the inconsistent message this sends to the court. The duty clause suggests to women that it is always in the best interests of their children to maintain a relationship with both parents. The violence clause then outlines the very valid reason to consider domestic violence in relation to parenting. How will this contradiction be addressed within this bill?

In addition, the domestic violence clause does not provide a definition of violence, but implies physical assault. Emotional and psychological abuse are not included, while we in shelters know it is often the threat of physical violence and other psychological abuse, such as threats of child stealing, which silence women and controls their lives.

Since in most cases the criminal justice system will not hear violence cases for many months after custody hearings have ended, women may not have proof available during custody and access hearings to support consideration of domestic violence in family court. In many cases, women will not even have been involved in the criminal justice system in spite of ongoing violence, because of retaliation against them and their children should they seek help.

Finally, we would request that inclusion of the domestic violence clause be accompanied by a mandatory training program for family court judges on the issues of domestic violence and its effects on children. Far too often we have seen judges in both family and criminal court reinforce incorrect and dangerous mythology about wife assault and make biased judgements based on these myths. Judges are human beings who fall under the same misapprehensions as the rest of the community. As community values and social norms change, they should be given every opportunity to receive the education they need to facilitate fair judgements.

Best interests of the child: On Friday Mr. Offer continually stressed that this bill was introduced to serve children, and yet there are a number of points in this bill which do not serve children. One of the most serious, of course, is the duty clause as outlined in our comments above, but there are others.

Subsection 35a(4), which lists legitimate reasons for denial of access, completely ignores the wishes of the child. On Friday, while Mr. Offer was outlining the bill's concern for children, Mr. Cochrane was saying, "We can't let the child call the shots." He felt we could listen to the child's wishes as long as they could be communicated, but this seems somewhat vague.

We have seen preschoolers whose wishes could not be verbally communicated dragged screaming from their mothers' arms and forced in abject terror to go with violent fathers for access visits. Mothers are then accused of brainwashing the child to resist, based on the assumption that the child is too young to know what is best for him. The mothers are afraid to prevent access for fear of appearing unco-operative or vindictive. I assure you there is nothing more heartbreaking than witnessing such a scene.

Subsection 35a(6) provides that noncustodial parents who do not wish to access their child will be forced to do so. We fail to see how compulsory parenting will be in the best interests of the child. Children know when they are not wanted. To force them to confront this rejection on a regular basis by compelling them to be with a parent who does not wish to see them is both cruel and unnecessary.

Clause 35a(6)(a) refers to supervised access. If the bill is really serious about dealing with access disputes, if it wants to provide a milieu where access can be exercised in a safe and reasonable manner which does not promote conflict, then why is funding not given to agencies that are willing to provide supervision during access? Some of our shelters have served as dropoff and pickup points for access visits, but our ex-residents are afraid that when they leave with their children after pickup, they may be followed home by the father and further threatened and harassed.

Such an arrangement also places excess burden on already overburdened shelters and exposes shelter residents and shelter staff to risks from violent males. Besides these arrangements, there are few supervised access services anywhere in Ontario. Even in Toronto there is only one supervised access and pickup/dropoff service, and this program appears to be in jeopardy due to funding restraints.

This bill attempts to ensure the rights of noncustodial parents, mostly fathers, yet makes no provision for services which would protect assaulted women from future harm. Before this bill was proposed, measures should have been put in place which would improve the availability of services that deal with supervised access.

For abused women, one of the most serious aspects of this bill is the suggestion of mediation in clauses 35a(2)(d) and (6)(c). In these clauses, the court is given the right to appoint a mediator. Evidence from California, where mandatory mediation has been tried, indicates that mediation is always inappropriate where abuse or threat of abuse is a factor. Our work with women all over this province substantiates this finding.

Mediation assumes that there is a power balance between the two parties involved. This is definitely not the case for battered women. You cannot hope to mediate fairly when one party has lived in fear of her life. Moreover, mediation is an unregulated profession and there is no appeal for recommendations made by the mediator. Many mediators lack an understanding of domestic violence issues and fail to be sensitive to the needs of assaulted women. This places women in danger of further violence and intimidation.

Government representatives continually point out that mediation will be considered only with consent of the parties. But we know that abused women will often consent to such programs because they hope to defuse the partner's anger or because, again, they do not wish to appear unco-operative and thereby risk losing their child custody to a violent father. Abused women, therefore, should be actively discouraged from seeking mediation in all cases.

This bill will further clog an already overburdened system. One of the objectives of this bill is to speed up access in cases where this has been denied. Once again, we need to emphasize the lack of hard evidence that a serious problem of access denial currently exists which would warrant a bill that increases the likelihood of further litigation. In most urban areas, courts are already clogged up with maintenance and support cases.

In addition, the 10-day clause in subsection 35a(7) ensures that courts will be forced to delay other matters and find themselves engaged in a juggling act to hear cases within that period. We fail to see how any of these provisions will result in speedy hearing of cases without major overhaul of the court system.

There are additional problems with this bill. In clause 24(2)(e), provision is made that an assessment will be made of "the ability...of each person seeking custody to provide the child with...necessities of life to meet any special needs of the child." This, in fact, is already in the Children's Law Reform Act. After divorce or separation a woman's annual income decreases by 72 per cent while her partner's increases by 43 per cent. It is clearly unfair that women continue to be penalized for this social injustice.

#### 1030

In clause 35a(2)(c), we find that reimbursement would be required from the mother to the noncustodial father for reasonable expenses incurred as the result of wrongful denial of access. Who decides what is reasonable? Mr. Offer himself last Friday labelled the word "reasonable" as "meaningless." Reimbursement will only mean further financial hardship for mothers already living on meagre incomes, as well as for their children. This provision further reinforces the economic discrimination women face in the community. The gender neutrality in legislation such as Bill 124 is not always synonymous with equality or justice.

In subsection 35a(9) only oral evidence is allowed in access denial hearings. An abused woman cannot be expected to give oral evidence in court in the presence of the man who has terrified her or who may have threatened to



kidnap her children if she testifies. We assure you that it is not uncommon to hear an abused woman say that her partner has threatened to kill her and her children if she speaks against him, and she would be most unwise not to heed those threats. We have only to read the frequent accounts of domestic murder and murder/suicide in our daily papers to recognize the validity of her fears.

In clauses 24(2)(c) and (g), the proposed bill states that the courts will consider "the length of time the child has lived in a stable environment" and "the permanence and stability of the family unit with which it is proposed the child will live." This is indeed unfair for women who stay at shelters for safety.

We know of women who have lost interim custody of their children on the ground that "shelters are not stable home environments." We also know that due to the severe housing shortage in many parts of Ontario it may be many months before the woman can find accommodation she can afford. In Toronto, for example, we find that women may have to stay at a shelter for as long as six months before appropriate accommodation becomes available.

Before we make recommendations, we would like to relate only one of many stories from our shelters, which we hope will point out the situation abused women face. We have changed the name to protect the woman's identity.

Leigh and her three children came to Transition House a few years ago. Her husband had been sexually, physically and emotionally abusive many times. Access visits were set up through the mediation service of the family court. Leigh told the mediation worker that Joe, her husband, had threatened to kill her and kidnap the children if she ever left him. The worker responded by saying that Joe had rights as a father and that men say these things but they do not mean them.

Joe picked up the kids for access visits at the shelter after Leigh moved into her new apartment. One night while Joe had the kids on an access visit, he got them to show him their new home. The mediation worker recommended to Leigh that since Joe already knew her address, she should change the access pickup point to her house.

For the next year, visits occurred with Joe coming to Leigh's house. Throughout the year, Leigh was beaten and threatened by Joe. Frequently, the kids would be ready to go and Joe would not show up. Joe harassed Leigh over the phone, accusing her of destroying his life. He threatened to kidnap the children. Leigh pleaded with the mediator to impose supervised access because of Joe's continuing violent behaviour and the kidnapping threats. The mediator felt that Joe would not really kidnap the children.

After the first year, Joe took the kids for the first time on a weekend visit. Leigh had fought against overnight visits but was told that Joe's visits with the kids had been going well and there was no risk involved. On Sunday evening, Joe called the Transition House and told the staff that Leigh would never see her kids again. Leigh called the police, but they did nothing for four days. After long and expensive months of searching, Leigh was told the children were in the United States with their father.

One year less four days after their disappearance, Leigh went to the United States to pick up her children. The transition for the children was very difficult because Joe had told them lies about Leigh and tried to turn the children against her. Leigh brought the children back to Canada and was followed by Joe a few weeks later.

She returned to court to seek a no-access ruling and had to again fight Joe for custody. Assessments of the children were ordered and the children reported to counsellors that their father had been cruel to them and they did not want to see him again. Throughout this process, the mediation service continued to tell Leigh that Joe had rights as the natural father of the children. She ignored pleas that she give Joe her new address. Finally, after nine more months, the court ordered no visitation rights.

Because of fear of continued violence against herself and her children, Leigh was forced to move to a new city and live under an assumed name.

On behalf of all the Leighs in this province, we would like to make the following recommendations:

1. Delete section 35a, since remedies for access denial already exist and there is no evidence to support the need for this legislation.

2. Provide funding for supervised access program and pickup/dropoff centres which can adequately protect abused women and their children from further harm.

3. Delete the duty clause or amend it to exclude women and children who are victims of physical, emotional or sexual abuse and eliminate the contradiction between the duty clause and the consideration of domestic violence clause.

4. Allow for written documentation at access denial hearings so that abused women will have other options for presenting their case than confronting the abusive ex-husband.

5. Provide a mandatory exception to the mediation clauses for any woman who has been abused or fears abuse against herself or her children.

6. Regulate and standardize mediation services and require mediators to take training in identifying abusive relationships in order to refer them back to courts for more appropriate management.

7. Add the wishes of the child to the list of reasons for legitimate denial of access.

8. Require all family court judges to receive education on the issue of domestic violence and its effects on children.

We thank you for this opportunity to convey our concerns in regard to Bill 124.

[Interruption]

Mr. Chairman: Order. I advise the audience that under the rules of the House and the committee, members of the audience are not permitted to participate in any way until you are recognized by the chair as a delegation.

Thank you very much for your presentation. You have used almost your half-hour. I am going to seek committee advice. I have been quite firm on this in terms of half-hour per delegation and 15 minutes per individual.

In view of the fact that I have quite a number of people who have asked to ask questions and this is an organization which represents a coalition of

groups right across the province, I do not want to be unfair to other delegations, so I am seeking advice of the committee. We have seven people who have requested to ask a question. If we were to allow, say, two minutes per person and then moved on to the next delegation, would anybody object to that?

Agreed to.

Mr. Chairman: Okay. First of all, Mr. Cousens.

Mr. Cousens: I will reduce it to just one question. Your recommendations include mediation as something, and yet in your statement before that, you do not have as much support for mediation. Under what circumstances do you feel mediation could be a good process to assist in resolving the confrontation and the problems that are going on?

Ms. Morrow: We are here representing abused women. It is our feeling that mediation should never be used in cases of emotional, physical or sexual abuse. Those are the women that we speak for.

I have here today a copy of the senate task force report on mediation in California, which I will have passed out to you, which deals with the question of mediation. It suggests, after much study in their own situation, that this is not appropriate in cases where abuse has occurred. I would say that those cases form a very high percentage of situations where custody and access is in dispute. Those are the people we are speaking for here today.

Mr. Cousens: Were there any figures out of the California study on the percentages? I can read the report. That is fine. In view of the time, I pass.

1040

Mr. Owen: Thank you for your brief. It is quite evident that you are knowledgeable and concerned. What led up to the legislation is the fact that the majority of marriage breakdowns do not involve abuse. We have heard from many, usually husbands, who have been deprived of access where there was not the concern that you are expressing. They feel that they have to have something to protect their rights too, and I do not think you are questioning that. I think you are concentrating on protection from the abuse situation.

If we proceeded with this in order to try to give them some protection for their rights where there is no abuse, can you spell out what you think is the one most significant thing to protect the situation that you are describing, where no one wants to bring about a forced bringing together of the parties involved, yet still wants to protect the larger number who are out there where there has been no abuse?

Ms. Morrow: To answer your question, to begin with, a preliminary study at the LaMarsh research program at York University shows that 48 per cent of women identify abuse as a factor in their separation, so I do not believe that you should say—

Mr. Owen: That would still be that the majority would not have it, then: 52 per cent.

Ms. Morrow: Nevertheless, if you talk about situations in which there is a dispute in court and if 48 per cent of all separations involve abuse as a factor, then I suggest that the percentage of those situations

which end up in a court dispute would be very much higher than 48 per cent. I do not believe we are talking about an exception to what we would like to call a normal family situation or even a normal separation, whatsoever, to begin with.

Further to that, I think it would not be appropriate to just come up with an answer off the top of our heads about what would best serve the needs of all of the points that we have raised here. I believe it is really necessary that there be serious consultation with abused women and with people who work directly with them around how those kinds of provisions could be made.

Mr. Jackson: Very briefly, thank you for your brief. I am very much concerned about the violence issues with respect to custody support and access. We have received many presentations from grandparents who have requested increased access, and they see this as a vehicle to do that. If I put the question of grandparent access in context with your brief, I share with you a concern about the primacy that the bill gives to the test of being a parent and not to the best interests of the child.

On that point, I am concerned that abusive parents might gain access to their children through a grandparent who might use this legislation. Do you interpret this legislation in a similar fashion, that it might present itself as a vehicle by which a grandparent can obtain access to a grandchild, and thereby an abusive noncustodial parent might in turn gain access? The way this bill is structured, I foresee that as a potential. I do not wish to suggest that all grandparents would do that—

Mr. Chairman: We would like to hear the answer.

Mr. Jackson: I would like to hear the answer but I want to make it very clear. This is a very sensitive issue, Mr. Chairman. But I have yet to find grandparents who admit that their son or daughter was violent or sexually abusive to their grandchildren. I have one case where the parents did admit it, but it is very rare. There is the doubt there. Denial is a very important element of the problem with violence. Could I get some response from you in that area?

Ms. Fraser: In my experience as a shelter worker, I have seen both cases. Some grandparents do everything in their power to protect their grandchildren from continued abuse from their abusive son, but I have also seen situations where grandparents allow access through their visitation to the abusive parent partner.

So I guess our concerns are there that it could provide a situation where children would be accessed by violent parents through grandparents. That is what I can tell you from our experience.

Mr. Jackson: I would like to pursue it further but time prevents it.

Ms. Poole: Thank you, Ms. Fraser, for a very sensitive brief. I personally found it extremely helpful, more so than any of the women's groups that have come before us today because it gave some measure of relief to those of us who are struggling between the need for this legislation—I am one who believes there is need for it—yet protecting the rights of abused women. I found it very helpful that you specifically made suggestions how this legislation can be improved, and not to say, as other women's groups have, that it just should be scrapped.

You have mentioned that you would like to either delete the duty clause



or amend it to exclude women and children who are victims of abuse. Am I to take it from this that if the government were to amend subsection 20(4a) to exclude those women who have been abused and if we were to do things such as provide the mandatory exception to the mediation clauses, that would relieve the bulk of your concerns in this area? Could you live with this legislation if we were to make some of the amendments you have suggested?

Ms. Morrow: Yes. You would have to make all the amendments in order for us to be happy about it. We have given options in terms of our recommendations, not because we feel this legislation is required but because we know the government is committed to this legislation, and we would like to ensure that abused women and their children are protected as much as we can possibly ensure that, given that commitment. That is where it is at. That is how we feel.

However, the first option of our recommendations remains our recommendation. We do not feel section 35a is necessary and our recommendation is that it should not happen. Failing that, we would like to make sure that assaulted women do not have to pay, because the price they have to pay is sometimes their lives and I do not think that is a fair price.

Mr. Carrothers: I guess Ms. Poole has already dealt with an area I wanted to, so perhaps I could deal with a much more specific question.

You brought up the issue of subsection 35a(9) and the oral evidence that is to be used at these hearings. I was intrigued by what you said because I had seen this as a positive change. You got away from the affidavits, away from perhaps having the better draftsman be the winner and to a point where people are assessed and the judge can talk to them. I also note in 35a(9) that there is still the ability to use affidavit evidence. What I am wondering is, does that not really protect the abused wives? I can understand how they could feel intimidated. Does not the ability to step back to affidavits perhaps provide protection?

What is troubling me, I guess, is that you seem to be able to have only affidavit evidence or oral evidence. There is no other way to have evidence. What else do you do?

Ms. Morrow: I guess that would depend on how educated the judge was before whom the woman was standing. We are certainly not confident about the level of education of judges on domestic violence issues in this province at all. We cannot rely on them, first, to identify that this is an abusive relationship because sometimes the woman is too terrified to say, or to take appropriate action should the judge identify that as a problem.

There are other problems with the 10-day rule and the oral evidence situation. For instance, if we were disputing whether the child was sick, does she have to have permission to bring a doctor's note? If she has to be in court in 10 days, does that mean that women, who usually do not have the money and will have to go to legal aid, end up not being represented by a legal representative at all? You cannot get one in 10 days if you have to go through legal aid. There are additional problems that we did not even bring up today.

Mr. Offer: This is mainly some clarification. First, thank you for the brief. At one point you have alluded to a statement I made last Friday in terms of the term "reasonableness" being meaningless. On that you are absolutely correct, in our estimation, as it relates to access enforcement. It is very difficult in terms of enforcing an order for access when the initial order has been that access ought to be reasonable.

1050

Just as clarification, it was not in terms of, as in your brief, reasonable expenses, which are obviously quantifiable. My comments, and I checked my notes that I issued on Friday, were not in relation to the phrase "reasonable expenses." They were in relation to the enforceability, whether reasonable access is workable. That is why, in this legislation, we have provided a way in which the parties can apply to have either a separation agreement or an order changed from reasonable to specific. I just wanted to indicate that as a point of clarification.

The other point you brought up was in terms of the Support and Custody Orders Enforcement Act system. I know that you are well aware that the SCOEA system is designed to provide a way in which support and custody orders can be enforced. In that way, this bill and these particular amendments provide a remedy by which access orders, another part of court orders, can be enforced. We think, in terms of the enforceability of orders, that this makes these orders at once enforceable in an inexpensive and an expeditious way.

I do not have a question, save to thank you for the information you provided, but I wanted to clarify the two points from your submission.

Mr. Chairman: To the next group, I would have called him shortly had he been within your half-hour of time, because he was using up your time, but we had decided to extend a bit.

Mr. R. F. Johnston: Thank you for the brief. I really appreciated it and I agree with many of the points you have made. I was struck yesterday by a group that started by saying this is not really child-focused legislation at all. As somebody who had dealt with the drafting of the Child and Family Services Act, the more I thought about it the more I realized just how Neanderthal this law is in comparison with other laws we have.

All you are asking for is a really tiny change in the denial system, to ascertain the best interests of the child or the child's wishes at that time. I was just going through the Child and Family Services Act, and I am wondering if you do not think perhaps, not to be too leading in this, that we should be looking at it as more of an example of where a child should be involved.

Under one section of the Child and Family Services Act, the child who is becoming a ward of the state can determine whether or not he or she wishes access to his or her parents. In this case, here we are dealing with a marital split and the child is not a ward of the state and has no rights. There are sections in the Child and Family Services Act that talk about the rights to legal representation for any young person at any time, and in this bill there is nothing saying that before an action can be taken before the courts that may or may not affect that child's wishes around access, that child needs to be informed of his rights. There is a listing of the rights of the child in the Child and Family Services Act. There is nothing in this act at all that talks about the rights of the child.

Do we not need to do a lot more than what you are talking about if we really are going to have this law look after the best interests of children? Do we not need to recognize what we have done in other legislation, where kids over the age of seven can essentially veto an adoption and where kids over the age of 12 have dramatic rights. Do you not think we need more of that rather than just the small measure you have mentioned?

Ms. Fraser: The small measure we mentioned is a beginning. I like

your suggestions about ascertaining what the child's wishes are. In my experience, there are children who are forced to see their fathers who do not want to see them. They do not have a choice. It puts their mothers in a position of having to force their children into an access visit the children do not want in order to obey an access order. In fact, some studies have indicated that a lot of access problems happen with older children who do not wish to have their weekends spent with their fathers. They wish to spend their weekends with their friends as they get older. They resent that requirement that they spend every weekend or second weekend with a parent.

Mr. R. F. Johnston: It might also deal with the other side, which is the manipulation by the mother that is always being argued. The child actually can speak for himself or herself with a lawyer. It might deal with that as well.

Mr. Chairman: Thank you very much for your presentation. It has been most helpful to the committee, bringing to us the benefit of your expertise and your contacts with many groups across the province.

Our next organization is the Barbra Schlifer Commemorative Clinic, and representing that organization, Mary Lou Fassel. Welcome to the committee. You have one half-hour to divide as you see fit between presentation and questions. As I have done with other groups, I caution you against making reference to private matters that may be before the courts or may shortly be before the courts.

#### BARBRA SCHLIFER COMMEMORATIVE CLINIC

Ms. Fassel: I will introduce myself again. My name is Mary Lou Fassel. I am from the Barbra Schlifer Commemorative Clinic in Toronto. I have been director of legal services at the Schlifer clinic for two years, and in that capacity have provided legal advice and other legal support services to many hundreds of women who have experienced abuse within their marriages and ongoing difficulties in post-separation or post-divorce relationships with their husbands.

The Schlifer clinic was designed to provide legal support and counselling services to female victims of violence and has been doing that since it was established in September 1985. Since that time, we have provided service to approximately 4,000 women, approximately half of whom are battered women. We also provide service to women who are victims of sexual assault and who are adult survivors of childhood sexual assault or incest.

It is significant to us that the area of largest growth in our clinic, that is, the area in which the demand for our services has steadily increased, is in the area of incest. Our experience with our clients who experienced sexual abuse as children, mostly perpetrated by their fathers, and our developing consciousness of the enormity of that problem has given rise to a great deal of concern on our part about any existing or proposed legislation in either the criminal or the family law spheres that might detrimentally impact on the reporting of such abuse or on our ability to deal with the impact of that abuse.

Our clients are women who are still dealing with the impact of that kind of abuse into their 30s, 40s and 50s. The impact is as significant to them at age 50 as it was at age 8, 9 or 10. I will address myself to this matter very briefly in comments on the duty-of-parent provision in the bill, subsection 20(4a), in a few moments.



I would like to begin, however, with addressing your attention to what is the overriding issue posed by Bill 124. I am sure you have heard this on a number of occasions already. It is the issue of whether or not there has been a sufficiently demonstrated need for this bill, a sufficiently demonstrated need that would warrant this bill being passed into law, and also whether this bill is capable of accomplishing its stated goal; that is, to provide enforcement of access arrangements without also and primarily giving rise to greater hardships than already exist on certain groups of individuals, namely, custodial mothers and their children.

In this regard, I intend to rely not only upon my experience with my clients at the Schlifer clinic but also upon my experience as a family lawyer when engaged in a private practice in family law before moving to the Schlifer clinic.

I share the opinion of many of my colleagues in the profession that there has not been a sufficiently demonstrated need for this bill. By comparison to other family law reform initiatives, particularly property reform as embodied in the Family Law Act and support enforcement as embodied in the Support and Custody Orders Enforcement Act, both of which were designed to address injustices of enormous proportions, injustices which had been well documented not just by legal scholars and practising lawyers but by government, this bill seems to be founded primarily upon the personal views of its authors, apparently responding to representations made by a small number of individuals who feel aggrieved by the family law system.

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It is interesting that, by comparison, the government did not feel compelled to move in the direction of support enforcement, years ago, until a substantial amount of data had been collected. We are all aware of how substantial that data was. We are all aware of representations made by the Attorney General (Mr. Scott) at the time of the passing of the Support and Custody Orders Enforcement Act about the delinquency rate in the level of support order compliance. Mr. Scott himself at one time indicated that defaults in support payment were as high as 85 per cent.

Of course, the reality of that situation was that the province was incurring enormous costs in welfare to mothers and children who were not being adequately supported by their spouses. The government, of course, has produced no research data of any sort to support its policy initiatives in this area. In fact, documentation seems to be nonexistent.

Clearly, no perceived injustices of whatever size or nature should be ignored by government. We must at least ensure that our formal responses to those perceived injustices are appropriate to the problem and that the case for a response by government is clearly made out. I suggest that there has not been sufficient exploration of the issue of access disputes in particular, and access enforcement. It is not at all clear at this point in time what the nature or severity of reported abuses is all about or how many people are really being affected.

We do know that the number of cases of severe and unreasonable access conflicts between husbands and wives is extremely low, and I suspect no legislation of any sort is going to assist in the resolution of that small number of chronic access problems that arise from ongoing animosity between the parties.

For those individuals who are involved in those ongoing conflicts, which



tend to go on<sup>o</sup> for years and years, service solutions seem more appropriate and probably a lot more useful. Service solutions, which I am sure you have heard about already, are things like access centres or services that can regulate and oversee the exercise of access by parents entitled to it.

As a family law lawyer, I reject the suggestion or the implication that access disputes are occurring in large proportions, or that the severity of these cases demands a legislative solution.

In summary, I believe that the problems that have given rise to this bill have been very much overstated, that this bill is not going to accomplish its stated goals and that in fact it is going to render greater harm. I believe this bill has the potential to do a great deal more harm than good, and that this harm will be suffered, as I have indicated already, by those individuals who are already disadvantaged by the family law system; that is, women and children.

For the occasional access dispute that all family lawyers are familiar with that arises between otherwise reasonable spouses and people who otherwise get along fine, this bill is not needed. Those disputes are resolved, in most cases, by the parties themselves, and in some cases, in a very summary fashion by their lawyers. Individuals with these occasional problems are not likely to use this bill.

At the other end of the spectrum, those cases in which there are severe and chronic access disputes that I have already mentioned, this bill will also not be more functional than the existing law. The existing law cannot provide adequate remedies, and I really do not think, despite the best efforts of the government in this legislation, that these remedies are going to be all that much more successful, because these disputes basically are not capable of legal remedies.

My experience of judges in the family courts during the years I was practising was continually of judges who would throw up their hands and say: "These are not legal problems. These are social problems. These are family-related problems. These are emotional problems that need to be addressed by other individuals and not by the courts."

In terms of how judges deal with these problems, I am sure there has been a lot of scrutiny here of the existing remedies under contempt actions and of the proposed remedies in this bill. I hope I do not particularly offend any provincial court judges by saying this, but my experience of how judges resolve this is more by a kind of strong powers of persuasion with the parties who appear before them than by anything else. I guess some people would characterize that more as coercion, but I think that when couples who are going back and forth at each other over access appear before a judge who does take a strong position, they may relent in some of those disputes.

Occasionally, I have even had experiences of judges who would call the lawyers into their offices and say, "How do you think I should deal with this problem?" And the lawyers would say, "I think if you go out there and kind of lay down the law to people, you are going to resolve some of this. If you go out there and really waffle on this issue, we are probably going to be back here again in another couple of weeks."

And judges frequently would play that kind of role and with some success. The success was not due to the existence of legal remedies that were available to them, and I do not think these legal remedies are going to provide judges with any more ability to deal with these problems.

Who then will use this bill? I believe that this bill will be used by individuals, on the one hand, whose grievance does not concern access to their children or maintaining a relationship with their children. I believe that this bill will be used by individuals who feel aggrieved by the family law system itself—that is, by the property division system and by the support enforcement system—and who feel that it is their turn to get something back from the system.

But most important, I believe this bill will be used by husbands, particularly, who exercise a great deal of power and control in their families who have historically exercised that kind of control in their own relationships, and who are suffering a great sense of loss of that control when their spouses separate from them.

We understand the issues of power and control most clearly in spousal assault situations. I believe that physical abusers are some of the very individuals who we may see in this law are greatly advantaged and who use this law to continue harassment of their wives and children.

But the case for battered women has already been well stated by a number of individuals, I trust, and I do not really believe that this committee needs to have those issues continually addressed. I trust that you are sensitive to the particular needs and concerns of battered women.

I would like to address a different group of women. These are the women whom I am convinced you are going to see in the enforcement courts with the passing of this legislation in the next few years. This is a group of women who are not physically battered, but who are similarly situated to physically battered women. These are the women and children who are emotionally and psychologically abused by their spouses. These are the group of women who are largely invisible because their problems are invisible. Their harms are invisible.

We have only begun in the last few years to acknowledge the extent of the abusive nature of wife assault. We are very far from understanding the emotional abuses that seem to be apparent in many relationships. In my practice of law I saw countless women who were not being physically assaulted, but were suffering to the same degree as, and sometimes even more than, women who were being physically assaulted.

The emotional and psychological abuse varied in severity from woman to woman, but quite astonishingly some aspects of this type of abuse were reported in just about all of my clients' cases, and most important, were identified by them as being the reason for leaving their marriages.

I have had cases of women and children suffering such things as a withholding by their husband of necessities of life such as food, in some cases near to the point of starvation. These are women and children who would literally not eat for the last two or three days of the week. While some of these cases were not necessarily close to cases of starvation, many of them were very debilitating. I had cases of women and children who had to plead for food and other necessities from their husbands or their fathers, and these things were only given on certain conditions.

If I had been a sociologist I am sure I would have been moved to try to do some research in this area in terms of the withholding of food as an emotional abuse, because it seemed to be significant and it seemed to arise in a number of cases. In fact, there have been people who have been getting into

that research and it might be useful for those of us who practise in this area to look at it at some point and to bring those findings to the courts.

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I had clients who reported that their husbands, for instance, would follow them to and from work each and every day, or call them every hour on the hour at work to find out if they were still there and what they were doing. I had clients whose husbands would harangue them for a few hours upon their return from work each evening, even if they were only a few moments late, and this harangue would take place routinely, day after day.

I had clients whose husbands would arrive home each night from their offices and would immediately go into the kitchen and throw the dinner in the garbage and who would knock furniture and ornaments over and would go upstairs and empty out all of the drawers in the bureaus and then go downstairs and tell their wives to do it all over again. It sounds astonishing, but it did happen.

I had clients whose husbands, while never touching them, threatened to kill them every day of their marriages, and clients whose husbands threatened the wives with killing their children if they did not do what they were told. I had clients whose husbands would buy a much-wished-for toy for a child and then, when that child became attached to that toy, would destroy it. I had clients whose husbands killed their children's pets.

I had clients whose husbands forced them to submit to indignities like removing their clothes in front of their children to degrade them in front of their children. I had clients whose husbands consistently referred to them in verbally abusive language as "whores" or "hookers" in the presence of their children.

I had clients whose husbands controlled every aspect of their lives, from what food they ate, what clothes they and their children wore to what friends they could have and where they could go and when they could go there, and I had many clients who reported withholding of money by their husbands, generally as a way of husbands degrading and trivializing them.

None of these things involved outright physical abuse. These things were all emotional and psychologically devastating to women and to their children, who either were the objects of this kind of abuse or who witnessed it.

These things are as much about power and control in relationships as is physical assault. Many, many women suffer this kind of abuse. Whether or not you accept the statistics that you may have heard about the amount of physical wife assault, you can be assured that the amount of emotional abuse of wives is twice or three times or even much more than that greater than the amount of physical wife assault.

This abuse is what women seek to escape from and remove their children from when they leave their relationships, but, sadly, this kind of experience, this kind of exercise of control, is not easily escaped from. Husbands of this sort will inevitably continue to inflict this kind of control on their wives and children even after separation, and by whatever means they can.

Just as in the case of wife assault where husbands frequently use access to their children as a means of accessing their wives and continuing to inflict a great deal of physical assault on their wives, so too do I believe



this bill will be used by the husbands I am now describing to continue the control, harassment and intimidation of their wives.

I also want to talk to you about emotional abuse of a different sort, only because it is so prevalent. It is probably something that most family lawyers would immediately be able to identify as affecting a large number of their clients. It arises out of the enormous financial differences between husbands and wives upon separation.

I am sure you know and I am sure you have heard during these hearings that women are economically disadvantaged by divorces. There are some people who say that the leading cause of the impoverishment of women and children is divorce. There are some statistics available that indicate that women's standard of living decreases sharply as compared to their husbands' upon separation or divorce. We know that child support awards—or those of us who believe—are still, unfortunately, very low and that even enforcement is not yet what we wish it was.

In view of the financial differences between husbands and wives, I am sure you can understand situations in which women are trying to make ends meet as well as they can; are having ongoing disputes with their husbands about paying child support, or paying it regularly or on the appointed day it should be paid; are not able to provide their children with the kinds of luxuries, not even the kinds of necessities of life that the husband may be able to provide or is providing to his children.

She is scrimping and saving. She is going to be unable to provide the kinds of luxuries that we would all like to provide our children, like piano lessons, dancing lessons or private camps during the summer. She is probably unlikely to be able to buy toys for her children, or at least the more expensive toys that children seem to like these days. She is more than likely not going to be able to participate with her children in more expensive recreational activities, like trips to baseball games or Canada's Wonderland.

At the same time, she is the one who is doing all the child care, who is coping with the difficulties of raising children alone. She is the one who is getting up each morning to feed those kids and get them off to school. She is the one who is preparing their dinner when she gets home from work in the evening, helping them with their homework and then putting them to bed.

She is the one who is going to have to listen to her kids crying and whining when they do not want to do something that she is telling them to do or she does not want them to do something that they are doing, like watching TV. She is the one who is going to have to be walking the floor with those kids when they are sick all night and she is the one who is going to have to be taking time off work without pay to take those kids to doctors or dentists when they need to go there.

Then in spite of all of this, she is faced with those kids returning from an access visit with their father and saying to her, "We want to live with daddy because he does not yell at us like you do" or "We want to live with daddy because he buys us these presents" or "He said he's going to send us to this camp this summer."

If you cannot understand how emotionally devastating that may be to a woman who is in that situation, I think we have some almost unresolvable conflicts. I hope that those kinds of conflicts, as between legislators and those of us who advocate on behalf of women and children, are not that severe.



If, confronted with that situation, she does strike out at him, if the frustration, the upset and the resentment get to such a point where she does say to him occasionally when he arrives on Saturday morning, "You're not taking the kids with you this weekend," is that going to be considered a wrongful denial of access? Is it a wrongful denial of access? Probably it is, but it is certainly understandable.

When a husband uses his financial superiority in an emotionally abusive way against his children and against his wife, she will protect herself. She will try to protect herself and her children in whatever way she can, and sometimes those ways may be inappropriate. Sometimes the only thing that she may feel she can do is to deny him access.

Is this kind of scenario envisioned by this legislation? I do not think it is. Is this emotional and physical abuse the kind that courts will understand or be sympathetic to? I do not think so. Throwing into a bill a provision—I am sorry, I do not remember the number of it—which gives the court power to prevent people from bringing excessive access enforcement applications if it is being done for harassment does not solve our problems. We have evidentiary problems to get over. We have a problem of some of these experiences being trivialized. As I said a few moments ago, we are not even in a position yet where we have been able to make family court judges understand the seriousness of wife assault, let alone this kind of emotional stuff.

In many respects, the putting into this bill of the provision I just mentioned and, in some large respects, even the violence sections of this bill is a kind of, I think, hollow attempt to address some very grave issues, is a kind of tinkering with the law that should not be permitted, because what is really being done is tinkering with real lives and real hardships.

I strongly believe that the number of abuses that this legislation will give rise to will far outnumber, by thousands, the number of legitimate grievances that this bill is designed to address. The husbands I have described are the husbands who are going to be filling up our courts, and of course so will their wives and children in response.

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This kind of scenario and this kind of abuse, as I have indicated, is not a very easy one to recognize or to acknowledge or to deal with. I think we are putting great stresses on any law and any courts to have to resolve these kinds of problems. The resolution of these kinds of problems lies elsewhere. It lies in education. It lies in support services. But it is more than a pipe dream, I would think, to expect that judges are going to be able to deal in an educated or even sympathetic way with these kinds of issues.

I want to address subsection 20(4a), the duty provision. It has been addressed by others before me in a very comprehensive way. I do not want to go into it. I just actually want to make very, very few comments about it.

First, I would like to indicate that despite the fact that it is worded in a way that puts emphasis on the fact that the duty exists where an order has already been made for access, I think that this is very much a friendly-spouse type of provision. It is a thinly veiled friendly-spouse provision, but it is a friendly-spouse provision nevertheless in the sense that it does, as a principle of law, at least set a standard of behaviour on both parents against which their individual behaviours will be measured.

It will set a standard in judges' minds as to what behaviour is or is

not warranted and it will set up a situation where it will be very difficult, particularly for women who have the care of their children, to allege instances of abuse in the face of a provision that tells them that it is always best for the children to have a continuing relationship with their fathers.

Second, and related to the first point, of course, is that I think that provision is really premised on a pipe dream. As sad as it is, and as much as we do not want to have to deal with the reality of child abuse, it does exist, and it exists in large proportions. As our experience with our adult clients at the Schlifer clinic would testify—they are clients who have suffered emotional and sexual abuse, primarily sexual abuse as children—the numbers of kids who are going through this kind of assault are being discovered as being inordinately large.

This provision establishes in some senses a fixed rule that we cannot tolerate because it is so far removed from what reality really is. It is simply not always going to be in the best interests of every child to have a continuing relationship with both parents. It is simply not the case. How are we going to protect those children for whom it is not the case when the people who are their primary caretakers are obstructed and restrained by a friendly-spouse provision of this sort? That is particularly true with some of the procedural problems of this bill that have already been identified to you, particularly the speedy-hearing provisions, the 10-day hearing provisions and the oral evidence.

It is going to be extremely difficult to make decisions on the merits of what is in the best interests of children. It is going to be extremely difficult to get representation for children through the office of the official guardian. I do not know procedurally how they are going to cope with that. I do not know how we will be able to present to the court evidence that would substantiate the allegations that may be raised.

Last, I just ask you to consider very briefly to what extent, if any, this duty of parent conflicts with our duty under child welfare legislation to report abuse. If this friendly-spouse provision, or friendly-spouse type of provision, has the impact here that it has had in other jurisdictions, which is that women will be reluctant to raise allegations in custody disputes or access disputes about abuse, does that not put them and their solicitors and anyone else involved with the children in a conflict situation when they do, on the other hand, have a duty to report such suspicions of child abuse?

I think that once again women are being placed in a very, very difficult no-win situation. On one hand, as the primary nurturers and caretakers of children, we are given the obligations to protect our children and to provide our children with the necessities of life. Those duties are in our laws in various places.

On the other hand, we are confronted with a duty provision of this sort which makes it difficult to fulfil our duty to protect our children. That is a problem that is going to have to be resolved. I would suggest that the best resolution at this point in time is to remove this provision from the bill altogether. Whatever the merits of the rest of the bill—and I think it should be clear I do not feel that there are many merits to this bill, primarily because it is not going to do what it is intended to do and will do a lot of horrible things it is not intended to do—I think it is important that we try to make amendments that are appropriate to minimize, given that the government does seem to be intent on proceeding with this bill to the extent it is. Thank you.

Mr. Chairman: Thank you very much. You have used up almost the entire half-hour. Four people have indicated they have questions. Perhaps a minute each would allow us to get these questions in.

Mr. Cousens: I will keep the preamble out of it. You have raised the point that there was not a lot of research, documentation or background information prepared by the government before proceeding with Bill 124 or any of the changes, which is surprising. I just wondered if you have any additional information to help back up your very excellent personal comments. I think you are looking for balance. You are looking for many of the things we are, too. If there is anything else that can be tabled to assist us to come up with the right decisions, that is what we want.

Ms. Fassel: I think other groups—the last group referred you to the California Senate task force report on joint custody and mediation—may be of great assistance to you. There certainly is a wealth of research in the United States on joint custody and mediation. With respect to access enforcement, I think we have to conclude by some process of deduction from those studies that there may be some problems with trying to enforce parent-child relationships in the way this bill seems to be designed to do.

Unfortunately, we do not have that kind of research available to us here in Canada, and it is difficult for us to come up with statistical information we could present to a hearing like this. But I really do think that the onus is not on us to do that. We are not the proponents of this bill. We have not raised it. I think those people who want to support this bill need to prove to the satisfaction of all of us, or at least to the satisfaction of the community that is going to have to deal with this bill, that being the legal community, that there is sufficient cause for it.

Mrs. Cunningham: I am Dianne Cunningham, a Progressive Conservative who is very interested in this legislation. I certainly share your views. From a political point of view, you can understand where we are really having some difficulty, because we have people who come to us and talk about access that is rightfully theirs and maybe where it has been wrongfully denied.

My background is with the Family Court Clinic in London where we did the supervised access. It has been going on for seven or eight years. Of course, it is great to have been part of it.

I think that is the underlying problem, though: doing the research, getting ready for this. The government does have papers that advise that what people need is more intervention, prevention, support. With the statistics on divorce, quite frankly, I think the government is afraid to really look at what the underlying issue is, and that is the initial support, either from the solicitor who can get the help of these kinds of services, or the judge if it has gone that far.

I wonder if you have had any experience with that and if you share my views. I would rather, obviously, be putting my money into support out there, to support the lawyers, to support the judges, than writing this legislation and spending all the time. For me, really, the promises in this I share, but it is hard for me to say to people that things will change because of it.

Ms. Fassel: I have a couple of concerns and these concerns also arise in the context of debates and conversations we have about things like mediation and joint custody. I do not want to sound too defensive about the legal profession, because in other respects I am certainly not defensive about

the legal profession, but in some respects we do a lot better job than people are being told we do.

Practising family law, I really cannot think of an occasion in which I ran into an extremely adversarial lawyer. I think family lawyers for the most part are quite flexible in their approaches to family law and, in all fairness to us, we do resolve the vast number of even extreme conflicts that come before us, including access problems.

I think the concerns that have been raised by some solicitors about things like mediation, for instance, are not because they are territorial but because it is a little bit of maligning of what we do and because it may not take an awful lot more to do even better work than we are already doing. It may only take provision of more services. It may mean that courts do have the advantage of having more access centres they can send couples to or family court clinics. I understand that the court clinic in London has been extremely successful in that respect.

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Our tendency is to think that laws can resolve all our problems. They feel heavy-handed. They feel like things that everyone is going to respect and stand up and pay attention to, but that is not always the case. In family situations, it is even less the case than in others.

I am not in the least making a case for mediation, because I think mediation is also replete with difficulties, but I do think that right now the government has to put money into support services like access centres and make those available. I trust that people who have the benefit of some time in using those centres will begin to resolve their own difficulties.

Mrs. Cunningham: Just for the committee, Mr. Chairman, I wonder if we can get an observation on this one statement about lawyers—I think it is important—and how they do their work.

Mr. Chairman: In fairness, to try to get the other two questioners in, could we go to them and then come back?

Mrs. Cunningham: I will just make the observation then. The poor people can go to the family court clinics and get some help. The wealthy people can afford the lawyers. It is that great group in between that cannot keep going back to the courts. I wonder if you share that view.

Ms. Fassel: I do not totally share that view. I think there is an implicit informality in some court procedures that makes it easier for middle-class people to be able to enter the legal system. Most lawyers are reasonable in the kinds of proceedings they will bring, so they are not going to deplete the resources of their clients. I do not totally agree with that, but I do think that from an emotional point of view, there are some better alternatives to being meshed in court systems once an original determination has been made by the court as to what is in the best interests of the child.

Mr. R. F. Johnston: I was not on the list, but I enjoyed the presentation a great deal.

Mrs. Cunningham: My second question was Richard's.

Mr. R. F. Johnston: I was going to say, though, that Ed Broadbent



assured me we are the only ones who can talk about average Ontarians and Canadians, so I was kind of disappointed to hear Tory candidates doing that.

Mr. Chairman: I am glad you reinforced that. Ms. Poole.

Ms. Poole: Do you mean I get Mr. Johnston's minute too?

Mr. Chairman: No.

Ms. Poole: Thank you, Mary Lou. I guess one of the things I am having the greatest difficulty with as these hearings proceed is the increasing polarization, male versus female. Perhaps it is logical to a certain extent because the majority of custodial parents are female and, by logic, the majority of noncustodial parents are male.

I do not mean for a moment to trivialize the examples you gave today. I know they are very real. But by the same token, I point out to you that I have heard an equal number of horror stories from fathers who have been denied access to their children, which seem to me to be very legitimate concerns.

Keeping in mind that we are always trying to look at the best interests of the child, but also keeping in mind that we have a new Charter of Rights and Freedoms in this country, my question for you is, do you think, in all fairness, that noncustodial parents should be denied a legal remedy when court orders are not enforced?

Ms. Fassel: No, I do not believe that. Of course, I do believe that they must have legal remedies that are at least the equivalent of any legal remedies available to anyone else in the family law system. I guess what is at issue here for me is that I do not think our current system is working as badly as has been made out. I do not think the legal remedies, particularly the informal ones that I mentioned, are not succeeding. I think they are succeeding.

But even in terms of other legal remedies that might be available, it could be conceivable, for instance, for a father who is being denied access to bring a variation application under the existing law to have his access more specified or to have his access supervised by an access centre or a third party, depending on what his problem is with access. If his problem is that the children are not made available to him until three hours after they are supposed to be made available to him, then his solution may be to go to court and seek a variation to have the children delivered by the custodial parent to a third party who can monitor the times the children are brought and picked up.

The access parent who has these problems can have these problems addressed quite adequately by courts through more specificity in these orders and through variation orders, as well as through, as I said, the tendency, unfortunately, of judges to try to lay down the law to people who are offending.

Mr. Offer: When you say in your last point that they can apply for a variation under the existing legislation, I do not disagree with that, but are they not burdened with the proof of showing a material change in circumstance? In this legislation we are saying that if orders in terms of access have been ordered as being reasonable, they can go before the court without having to show a material change in circumstance. In terms of making access enforceable, we feel the parties should be able to do that without having to show that there has been a material change in circumstance, but rather that they would just like it on specific terms.

Ms. Fassel: I guess I would want to argue on a father's behalf that the denial of access is a material change of circumstances. The loss of access to his children is material enough to warrant a variation application.

Mr. Chairman: Thank you very much for coming before the committee and sharing with us the benefit of your experience and expertise.

Our next presentation is from the North York Women's Shelter, and representing that organization is Lee Gold. Welcome to the committee. You have one half-hour to make your presentation and answer questions. Divide it as you see fit. I would ask you to refrain from making reference to personal matters which may be before the courts.

Just for members of the committee, the brief was circulated yesterday. If, for some reason, you forgot to bring it with you and would like a copy, we have extras here. Just indicate to the clerk.

Ms. Gold: I think I will just wait until all that is done. Is nobody from the Attorney General's office present?

Mr. Chairman: They are always present.

Interjection: They are everywhere.

#### NORTH YORK WOMEN'S SHELTER

Ms. Gold: Before beginning my formal presentation, I want to make a few comments based on some of the statements that have been made here and the thrust of some of the questions I have heard. I will just lay them out first and then I will present my brief.

1. The denial of any linkage between this access enforcement legislation and support enforcement legislation: To quote briefly from the compendium attached to the amendments to the Children's Law Reform Act in 1987:

"3. There is a connection in some cases between the denial of access of an access parent and the nonpayment of support by the access parent. Frustration over access of a child may also cause further problems in regard to custody and parents with problems enforcing access may feel unfairly treated when automatic enforcement of support begins in Ontario," etc.

I think that makes the point. I have the quote if you wish it.

2. The statement that this legislation is really geared to help custodial parents by forcing noncustodial parents to exercise their duty of access: How can you possibly legislate parental involvement or force an unwilling parent to see his child? Do you even want to do this?

3. I seriously question whether the courts will suggest a remedy—e.g., supervised access, which I wholeheartedly support—if no such services exist. I would submit that there is a terrible paucity of these services, given the need for them in this province, and that the money for these services should not come from women's programs but should come from the criminal justice system.

4. In our experience, children have no rights, but children who cry or are fearful to go on a visit have good reason to be afraid and they need to be listened to. The thrust of Bill 124 is not the rights of children but the rights of parents, in most instances fathers.

5. As a representative of assaulted women and their children, I am not talking about marital disagreements or discord. All of us know that intimate relationships involve both of those. I am talking about intimidation, abuse, violence and even murder in the home, the most dangerous place for women and children in Ontario.

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To proceed to my brief, I am here today as a representative of the board and the staff of the North York Women's Shelter and the more than 1,200—in fact, 1,242 as of December 31—women and children we have protected since we opened our doors in September 1984. During this time, my colleagues and I have spent countless hours in court and in lawyers' offices.

More important, we have listened to women slowly reveal the abuse they have suffered at the hands of their partners and their fears for their safety and the safety of their children. Because of the prolonged nature of the separation process, we continue to offer advocacy and support long after the women have left the safety and security of the shelter. We know at first hand the terrible fear in which so many of these women continue to live.

I would like to remind the committee that the most recent federal study found that one in eight women is abused in the course of her intimate relationships with a male partner. I know at first hand the women who come to our shelter and all the others who call seeking help, somewhere between two and 10 a day, who are told, "I'm sorry, we have no space." These women represent only a tiny fraction of abused women in Ontario.

From this experience and from research and study, we know that abused women are isolated, intimidated and afraid to speak up about their abuse, afraid to call the police, afraid to confide in doctors. They are often ashamed or have come to believe, as they are often told by their male partners, that the abuse is their fault. Therefore, when I discuss my objections to Bill 124, and I have very serious objections to it, I am speaking not only for the women I know, but for the more than 100,000 women in this province who are victims of abuse.

To begin at the beginning, with subsection 20(4a), the Attorney General (Mr. Scott) would have us believe that the duty clause has been put there for the benefit of the custodial parent to force the noncustodial parent to exercise his responsibility—access. This is the most alarming section of Bill 124. It negates any safeguards that the bill purports to include in later sections, and it is certainly not always in the best interests of the child to have contact with both biological parents. It is also hard to believe that a parent who wants nothing to do with his child can be coerced into exercising access or that such access would ever be in the best interests of the child.

The duty clause, although Mr. Offer denied it when he spoke to it on second reading, does sound very much like the "friendly parent provision" whereby custody is granted to the parent who appears to be the most co-operative vis-à-vis access. I recognize that this bill is directed at post-custody settlement decisions; however, I think it gives a message to the courts and I am afraid of it.

This has happened frequently in the United States and has been shown to force women who are fearful for themselves or their children to remain silent about the abuse rather than risk losing custody of their children. The duty clause is a disincentive to women who would otherwise ask for a denial of

access or for limited or supervised access in order to protect their children. We know that the majority of enlightened family law lawyers in Metropolitan Toronto today actively discourage their female clients from asking for such a denial of access no matter how serious or well-founded the allegations of abuse to themselves or to their children. The lawyers fear that if the women do so, they risk losing custody of their children.

This trend is all the more alarming, coming as it does at a time when the statistics about the prevalence of child sexual abuse are horrifying. Diana Russell's research and the Badgeley study estimated the prevalence of sexual abuse of female children under the age of 16 to be close to 35 per cent. A Health and Welfare Canada report adviser stated in a discussion paper on the sexual abuse of children, "I am appalled that a problem of such enormous proportions and with such devastating effect on children continues to be tolerated in Canada."

Therefore, we ask that this paragraph, the duty clause, be deleted from Bill 124 as a first step in amending the Children's Law Reform Act. It is a general statement which will allow judges to avoid dealing with allegations of abuse. The criteria to be considered should simply be the best interests of the child. The duty clause leaves no room for women or children who could be at risk if they continue to have contact with the abuser or for women who are forced by this law to continue a relationship with their abuser. We know at first hand of women who are assaulted on access visits.

To move on to clause 24(2)(c) and clause 24(2)(g), which state that the court shall consider "the length of time the child has lived in a stable home environment" and "the permanence and stability of the family unit with which it is proposed that the child will live." I recognize that these are already in the act; I think they do not belong there.

These sections, although not new, are unfair to battered women and children and they can be used by the courts against women in violent relationships. We know that women have lost interim custody on the grounds that shelters are not stable home environments. Ironically, it is often only when women feel that their children are at risk and not just themselves that they actually leave their violent partners. Her husband may have beat her many times, but when he smashes the china cabinet and the shards narrowly miss the child, she leaves. Or when she is holding the baby and he continues to slug her or kick her with the baby in her arms, she leaves. Why should women be penalized for taking this action, even if they end up in a shelter or at a friend's or relative's?

Clause 24(2)(e) provides that an assessment will be made of the ability and willingness of each person seeking custody to provide the child with the necessities of life and to meet any special needs of the child. After divorce, studies show, a woman's income drops by 73 per cent and a man's increases by 42 per cent. You have already heard comments on this from Mary Lou Fassel. Should women, especially abused women and children, be penalized for these social inequities?

In subsection 24(3) the bill does recognize for the first time in Ontario that violence should be considered in assessing a person's ability to parent. This single paragraph should be added to the Children's Law Reform Act. The rest of the bill is unnecessary or detrimental to women and to children.

However, I must even question whether this provision will really protect



battered women and their children. For two years, I have spent time in court with an ex-resident during a protracted custody battle. This woman was on our waiting list for over two months before coming into the shelter. She had attended a group for abused women prior to that time until her husband beat her for going to the group. The police and their domestic response team had been called to the home over 10 times. She had sought medical attention for injuries sustained from the abuse.

She is approximately five feet tall and weighs less than 100 pounds. Her husband is six feet, three inches and weighs over 200 pounds. An extensive court-ordered assessment verified his inability to control his anger. He steadfastly denied the abuse under oath in court and claimed that his wife had knocked him down during the most serious incident.

After a two-year separation, with a sympathetic lawyer, witnesses and the support of friends and family, this woman was still so frightened of her partner that she could not state in a courtroom that her husband had abused her, even though it explained the vast majority of his allegations against her. How can women be expected to be protected by the courts if they must give oral testimony with little preparation time and no legal representation in order to prove why the denial of access was justified as required by subsection 35a(9)?

We have had several residents and ex-residents who literally prayed during access visits that their children would be returned to them in one piece. They knew their partners abused drugs or drank heavily. "What am I supposed to do?" a former resident asked me. "Deny access and risk losing custody, or grant access and deal with my conscience when the OPP come to tell me that my children have just been killed in an automobile accident?" No one in the small town where he lived would testify against him about his drinking, although it was well known.

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Clause 35a(6)(a) refers to supervised access. In the debate during second reading of Bill 124 it was made abundantly clear that there are almost no facilities for supervised access in Ontario. A few of our residents have used the supervised access of the Lakeshore Area Multi-Service Project, and while the children were safe the women still felt at risk of being followed after a visit. This did in fact happen on two occasions.

Our shelter has served as an access pickup and dropoff point for an ex-resident for over two years. This is not the function of a shelter for abused women. This woman is still terrified of her partner. He has been jailed for his abuse of her and the Catholic children's aid is aware of the abuse. The children return from access visits stating, "Daddy says he has an axe to knock the door down and a gun to shoot you with."

Every weekend, he gets to see the children for a day. We witnessed at first hand the radical change for the better in the children's behaviour when their father was denied access and the mother and children received counselling for the abuse. Initially, when they first came to the shelter, only two and three years old, you could not speak to them nor talk to them without being bitten or spat at. They were so unmanageable that it was unclear whether we could protect this woman when she had her children with her. Now that they see their father regularly, they have become unmanageable again.

Children who witness abuse exhibit the same behaviour characteristics as

children who are themselves abused. Wife abuse is child abuse, regardless of whether the children are in fact abused. Peter Jaffe's research and recent studies at York University verify this.

Because of the duty clause, women will be even less able to put the best interests of their children first. They will be caught in a catch-22: those with the most to fear from their partners will be the least likely to speak up.

The women we work with live in terror for their children's safety. They have lost faith in the courts' willingness to protect their children. They know how hard it is to prove that their partner drinks during access visits or sexually abuses the children, but they know his history, what they have witnessed and what the children tell them. Women and children do not have much credibility in the courts. Fear silences them. They feel that their abused children are pawns in a system that makes absolutely no sense and in which justice is so often lacking.

Bill 124 refers to mediation in three places: subsection 31(10); clause 35a(2)(d); and clause 35a(6)(c). Mediation is only appropriate when it is entered into voluntarily by two equal parties. In this society, women almost always possess less power than men, and abused women are, by definition, controlled by the power which their abusing partners exercise over them through threats of violence, the kinds of things Mary Lou described, and the use of violence. As abuse is so often undisclosed, many separated women will be forced to sit down with their abuser in front of a so-called mediator. How can anyone mediate fairly except between equals?

Mediation has been touted as the panacea for all disputes, yet it is still unclear how mediators will be trained or regulated in Ontario. I have heard highly respected mediators in this province state publicly that they can mediate in abuse cases. Women will be at a disadvantage in this process and abused women will be doubly disadvantaged.

Mediation should not be a remedy that can be ordered by the court. It is dangerous for abused women and for their children. Although technically mediation is only ordered on consent, a judge's suggestion is a very persuasive and, one could say, even coercive tool. A woman would have to be extremely strong and feel very safe to refuse such a suggestion.

In closing, I would like to point out that the Canadian Bar Association's submission to the Attorney General on Bill 60, the predecessor of this bill, states, "There are no statistics on the extent of the problem." Mike Cochrane has stated the same to this committee. The bar association's submission continues, "There is a sense the bill will create problems where they did not previously exist..., will create more problems for children...and there will be more access enforcement litigation." There are no data to support the need for Bill 124, only anecdotal evidence and active lobbying by special interest groups.

This bill sends a clear message to the judiciary that access is a serious problem when it is so insignificant that the government does not even bother to do any research on the issue, whereas child sexual abuse and wife abuse are serious, well-documented issues. Women and children are currently very poorly protected by the courts and this bill will exacerbate an already bad situation.

There is also no evidence that proves "it is in the best interest of the child to have contact with both biological parents no matter what the quality

of that parenting." There are data to support the conclusion that "closeness to the mother is related to a child's wellbeing." At a recent meeting of the Law Society of Upper Canada, only one out of 100 practising family law lawyers present thought the amendments set out in Bill 124 were needed.

Therefore, I ask that this committee table this bill on the grounds that it will create more problems than it will solve and that it will put mothers and children at risk. Only subsection 24(3), the domestic violence section, should be added to the Children's Law Reform Act. At the very least, and I hesitate even to state this, I ask that the committee delete the duty clause, subsection 20(4a), from Bill 124 so that the violence section has some meaning, notwithstanding the difficulty of proving violence and/or fear of violence in court. At least lawyers can now make that argument where prior to this time it was considered a nonissue by the courts.

I ask that abused women who deny access be entitled to legal counsel and legal aid certificates. They should also have the right to present affidavits rather than oral evidence.

I ask that mediation never be suggested as a remedy for abused women. Mediation can only work between equals, a rare state in our society even for women who have not been abused, and that it never be suggested until strict standards for certification of mediators are established.

Mr. Chairman: Thank you very much for your presentation. We have a few minutes for questions.

Mr. Carrothers: Thank you for your presentation. We do not have much time, so I will get right to my questions. You made some comments on pages 3 and 4 of your brief about clauses 24(2)(c) and 24(2)(g), and I just want to clarify that. Those sections are already in the law.

Ms. Gold: Yes, I am aware of that.

Mr. Carrothers: They are not being re-enacted or changed at all by Bill 124. Are you suggesting they should be taken out of the Children's Law Reform Act?

Ms. Gold: I think they currently work against women and children and appear to be doing that in the courts, so I have serious concerns about them. Since they were part of the summary, I did want to refer to them.

Mr. Carrothers: What you are really suggesting is that we should look at further amendments in that area then?

Ms. Gold: Yes, I think you would take those out and put in the Children's Law Reform Act the section on considering violence or threats of violence, which are harder to prove, as a reason for denying access or certainly ordering supervised access. What happens now is that because there is so little supervised access available, and many women would be willing to have that as an option, it is one or the other. Women cannot ask for denial of access even under the most horrendous circumstances.

Mr. Carrothers: If I may, I want to understand the point on the duty clause as well. I have in front of me the Divorce Act sections you have been referring to, I guess. When I read it, it talks about a duty to facilitate maximum contact, which I see as very different from subsection 20(4a). The obligation there only arises when there has been a custody decision, when

there has been an access decision. Then you have what really is an obligation to make that work, if you will. It is not saying you have to have maximum contact, as I read it. Maybe I am misunderstanding it, which is why I am asking the question. It is saying you have to make it work once it has been decided.

We have had some talk this morning of cases where the father or the noncustodial parent might say: "You have a bad parent you are with. Come and stay with me." It would seem this section might even allow a way to get at that behaviour, because that noncustodial parent would not be living up to his obligations.

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Ms. Gold: That is right, although I think that in reality it is extremely difficult to control what is said on access visits or in the family home.

Mr. Carrothers: And to find out what was said.

Ms. Gold: Our experience with women is that they do not talk down their partners. I think that by setting out a general clause like that right at the beginning, it sets a tone for the rest of the bill, which puts the thrust on the glory of access.

In most marriages, even when they end, access will continue. We are only trying to protect the people who are not protected, and that is children who are being abused or women who are threatened with abuse. Access is a way violent men continue to harass, intimidate and even murder their spouses. If we are going to put the emphasis on protection, we do not need the duty clause. Anyway, it is probably unenforceable.

Mr. Carrothers: If we dealt with that and could put something in, as was suggested, about perhaps making the statement that the duty did not apply in those violent situations, would that redress it?

Ms. Gold: I guess I fail to see why it needs to be there and what value it has. I think it gives a clear message to judges that if they do not want to look at the specifics, they can always go back to that and focus on, "It is your duty to exercise access, no matter what."

Mr. Carrothers: Is it not a duty to co-operate?

Ms. Gold: Co-operate in the exercise, yes.

Mr. Carrothers: With the situation.

Ms. Gold: But when the Attorney General's office explains that, it will say it is really there to force the unco-operative, noncustodial parent to exercise access. I think there is not a whole lot of value to that. I do not see why it needs to be there and I think it cannot be seen in the context of this bill alone. It has to be seen in the larger context: what has happened in the United States and where it is leading. I think that is why I and other people have tried to draw your attention to it and to say it is extremely important this not be there.

Mrs. O'Neill: You have no doubt had a very significant role in advocating for people. I wondered why your closing statement is such a strong



statement against any form of mediation. Is it possible an advocate could do the mediating? You suggest you are never on a level playing field. Has the advocacy role in mediation been tried?

Ms. Gold: Mediation is a new field in this province. It is not clear to me who these mediators are going to be and how they are going to be trained. I get very worried when I hear a woman who sits on committees for the government state that she can mediate, even in abuse cases. I think abused women need advocates; there is no doubt about that. But mediation happens behind closed doors and the mediator then has tremendous power to come to court with a suggestion. I think women are going to be at a disadvantage in this process and abused women are always going to be at a disadvantage.

Mrs. O'Neill: I guess you are telling me you have not explored that. You are not really confident in what is coming down the pike in that particular area.

Ms. Gold: Yes, and I feel very disturbed that it is put into legislation as a remedy when we do not even have any guidelines on mediators and what the criteria are of who is an eligible person for mediation and who is an eligible mediator. I am very worried to see written into law that this is a remedy when we do not know who these people will be and under what circumstances it will be used. Our experience is that when it is suggested to women, it is very hard for them to say no. They are almost always at a disadvantage in the process.

Mrs. O'Neill: Maybe as this field gets better known that will be a new area for advocacy, because it does seem that you are pretty committed to the court system and this may be another alternative.

Ms. Gold: I guess my commitment to the court system is tempered by my experience in court, which is that it is still not a place that does a terribly good job by women and children.

Mr. Chairman: Have you ever experienced or witnessed shuttle mediation being used? I know that several delegations have mentioned the problems that exist where you have unequal partners in terms of willingness to stand up for themselves. If you put both partners in the same room with a mediator, I can perhaps understand the intimidation, but if they were in separate rooms and you had a shuttle mediator and if the woman had an advocate with her, could mediation work in that situation?

Ms. Gold: I think all things are possible. I guess I would just like to come back to my original point: What we mean by mediation, who is doing it and under what circumstances is still very unclear and has potential dangers. Therefore, I want to raise some red flags around it.

Mr. Chairman: But you have had no direct experience with shuttle mediation?

Ms. Gold: No, I have not.

Mr. Chairman: Thank you very much for your presentation and for sharing with us the expertise you bring from your experience.

We will be back in this room at 1:30 p.m. I remind the members that this afternoon's schedule of delegations is quite tight, so I would like to start at 1:30.

The committee recessed at 12:07 p.m.



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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHILDREN'S LAW REFORM AMENDMENT ACT

TUESDAY, APRIL 11, 1989

Afternoon Sitting



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Neumann, David E. (Brantford L)

VICE-CHAIRMAN: O'Neill, Yvonne (Ottawa-Rideau L)

Allen, Richard (Hamilton West NDP)

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Owen, Bruce (Simcoe Centre L)

Poole, Dianne (Eglinton L)

Substitutions:

Cousens, W. Donald (Markham PC) for Mrs. Cunningham

Farnan, Michael (Cambridge NDP) for Mr. Allen

Offer, Steven (Mississauga North L) for Mr. Beer

Also taking part:

Cunningham, Dianne E. (London North PC)

Grier, Ruth A. (Etobicoke-Lakeshore NDP)

Clerk: Decker, Todd

Staff:

Swift, Susan, Research Officer, Legislative Research Service

Witnesses:

Individual Presentations:

O'Marra, Allan

Lloyd, George E.

Hooshangi, Shireen E., Barrister and Solicitor

Desbois, Robert

Benson, Christina

From the London Co-ordinating Committee on Family Violence:

Boyd, Marion, Executive Director, London Battered Women's Advocacy Clinic

From the Ontario Association for Family Mediation:

Corner, Franklin J., President

From Access for Parents and Children in Ontario:

Dabraio, Rachele, Executive Director

From the Canadian Council for Family Rights:

Blair, David, Second Vice-President

From the Interclinic Working Group on Domestic Violence:

Pollak, Ann, Law Student



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Tuesday, April 11, 1989

The committee resumed at 1:35 p.m. in room 151.

CHILDREN'S LAW REFORM AMENDMENT ACT  
(continued)

Consideration of Bill 124, An Act to amend the Children's Law Reform Act.

Mr. Chairman: The meeting will come to order. We have a long list of deputants scheduled to appear before us this afternoon. As a result, I will be attempting to adhere to our timing as closely as possible. Individuals are permitted 15 minutes. Delegations representing organizations are permitted one half-hour. We had an understanding from members of the committee that the chairman can commence even though all of the members are not present, so we will commence to hear the delegations.

First of all, I would like to call upon Allan O'Marra. Welcome to the committee. As I indicated, you have 15 minutes for your presentation. You can divide that up as you wish between presentation time and questions from committee members. As well, I would caution you to avoid making reference to personal matters which may be the subject of court litigation. That is a caution for your benefit, not ours. Use your discretion.

ALLAN O'MARRA

Mr. O'Marra: Sure. I have already run this by my lawyer, so I have a brief I am going to read.

My name is Allan O'Marra. I live at 2382 Gerrard Street East, apartment 1, Toronto, Ontario. I am the father of a two-and-a-half-year-old girl whose name is Katherine Grace Evangeline. Katie, as she is better known, is a beautiful, intelligent, affectionate, blonde-haired, blue-eyed little wonder whom I love very much.

From May to December of last year, Katie's mother, my estranged wife, was able to deny me any contact with my daughter whatsoever. In December, I finally managed to get a court order on an interim motion for access in which I requested and was granted two-hour weekend supervised visits with my daughter at a community access centre in Pickering, Ontario. I saw Katie for the first time in seven months on December 18, 1988.

Because of the time that had elapsed since we had last seen each other, Katie's face was blank when she was first presented to me. Although I understood and felt prepared for the likelihood that she would not recognize me, it was still a very painful moment. However, within a few minutes she was smiling shyly at me and before long we were chatting like two long-lost friends.

Towards the end of the visit, Katie stopped the play she was engaged in and looked up at me. "Are you Daddy?" she asked. It took me a few seconds to regain my composure, and as I wiped tears from my eyes, I assured her that yes, I was her daddy and she was my little girl.

At the present time I am still seeing Katie for two hours each weekend in Pickering and my solicitor is attempting to arrange a court date for a trial before the Supreme Court of Ontario. At the trial I will seek a permanent order for meaningful access with my daughter and ask the judge to order settlement of all other outstanding issues in our matrimonial dispute.

Because of the pending status of my legal action, I cannot make specific comments regarding my case, but I would like to state some general facts about it as a prelude to my comments regarding Bill 124, and I will point out that I make all statements about my case without prejudice.

Two years ago my wife and I separated after a three-and-a-half year marriage that was fraught with unresolvable interpersonal conflict. My wife remained in the matrimonial home with our then six-month-old daughter. Leaving Katie was the most heart-rending decision I have ever made. My hope was that my wife and I could work out some equitable agreement whereby I could participate meaningfully in the parenting of our child.

Four months after our separation, when I attempted to arrange a separation agreement with reasonable defined access, my wife expressed concerns about my sexual interests and made it known to me that she would never voluntarily permit me unsupervised access with our child.

A family assessment, arranged by both lawyers, individual assessments, legal manoeuvrings and highly unsatisfactory access visits between Katie and I at the matrimonial home were followed by a total breakdown of access and legal proceedings last May. I then began working towards the court action that won me access in December.

The emotional and financial costs of this dispute for both parties has been devastating. Having had no prior experience with the legal system, and family law in particular, I was astonished, as were my friends and family, at how unprotected my rights are as a noncustodial parent in Ontario.

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I am 41 years old. Except for a single speeding ticket I received in 1984, I have never been charged with or convicted of breaking any of the laws of this province.

Since the breakdown of my marriage and separation from my wife, I have discovered that I am a second-class citizen, that the law does not protect my rights as a law-abiding taxpayer and a caring, concerned parent. I have been forced to prove my innocence in the face of groundless allegations; I have been put into a position where I must prove my competence as a parent of my child; and I have had to endure the humiliation of supervised access and the agony of outright, long-term denial of contact with my little girl. I am a member of a growing abused minority: noncustodial fathers. I am angry about the status of my parental rights and I want something done about it.

I suppose I am a victim, to some degree, of the attitudes and actions of fathers of earlier generations who participated very little in the day-to-day nurturing of their children and too often abandoned the family to the emotional and financial support of a mother who was ill-equipped to provide for a family on her own.

But I believe that fathers are different today. We participate fully in the parenting of our children, from involvement in prenatal classes to

assisting at the births of our children—and being present at Katie's birth was one of the most emotional moments of my life—to bathing, feeding and caring for them and nurturing them through the difficult years of childhood and on to the complex years of adolescence.

However, the statutes of the Children's Law Reform Act, as introduced in 1980, went too far in an overzealous attempt to protect the best interests of children. The provisions of the act do provide for protection of the child but, unfortunately, with a bias to the participation of the mother in the child's life and at the expense of the father's rights.

Because I left my daughter in the temporary physical custody of her mother, I have effectively no chance at obtaining sole custody of Katie, even if, ostensibly, I may be the better parent. The only way a father may be granted sole custody of his child in Ontario is if the mother abandons the child completely and/or expresses no interest in custody, or if the father is able to prove conclusively that the mother is grossly neglectful of the child's physical care. Mothers are universally considered the appropriate primary caretakers and I, for one, do not believe that concept is universally correct. There are many fathers who are superb parents in situations where the mother is a sub-par care giver. Fathers are rarely given custody in such circumstances.

One would think that in a situation where the mother and father are equally competent and involved parents during the marriage, they should be involved equally in the parenting of their children after separation and divorce.

Although subsection 20(1) of the Children's Law Reform Act states that the father and mother of a child are equally entitled to custody of the child, the sad fact is that joint custody is granted only if the mother is amenable to it. A mother who has interim physical custody of a child need only express belligerence at the idea of a joint-custody arrangement and family court will almost never grant that status to a father who petitions for it.

That is power of veto, pure and simple. Lawyers who represent mothers in custody disputes know this, and too many encourage their clients to oppose joint-custody status, to "go for control" and thereby operate from a position of strength in future discussions of sharing. Vindictiveness and a winner-take-all atmosphere are fostered and, in the end, no one—especially the children—wins.

In most custody disputes, the father has to be content with, at best, defined access, which ostensibly guarantees him a specified number of days per month with his children. However, it is appallingly easy for a custodial parent, usually the mother, to flout the law and deny the father access at will. The father must initiate an expensive and time-consuming court proceeding to seek redress on the denial of access, and should the custodial parent be convicted of contempt of the court order, she can be certain that she will never be fined or imprisoned for knowingly and often deliberately breaking the law. A seriously delinquent custodial parent can effectively destroy the relationship between a father and his children simply by preventing any meaningful contact between them. That is usually in addition to the vindictive manipulation of the children's attitude towards their father that too often happens in hostile family breakdowns.

Before I found myself in this debilitating dispute, I was quite ignorant of the insidiousness and indeed the scale of access custody denial. After two



years of front-line exposure to family law issues, legal manoeuvrings, assessors, lawyers and judges, and after meeting and discussing the problem with innumerable fathers in like situations, I have concluded that the present provincial statutes regarding custody and access are woefully inadequate to protect not only the rights of fathers to participate meaningfully in the lives of their children after separation and divorce, but the rights of children to the nurturing, affection and guidance that a caring father can provide.

I was very encouraged to hear about the Attorney General's original access amendment to the Children's Law Reform Act, Bill 60, as it was originally tabled, and then somewhat disheartened when Mr. Scott watered it down to its present incarnation as Bill 124 after ferocious and misguided lobbying by feminist organizations and feminist journalists.

As an aside, I would very much like to take issue with the feminists' blanket opposition to any amendments to the access elements of the Children's Law Reform Act. The concern expressed is that abusive men will take advantage of better access provisions to harass and harm women and children. This is not only addressed in other sections of the bill, but is typical, hysterical rhetoric that characterizes feminist attacks on any attempts that are made to equalize the balance of power between men and women in situations where the scale has tipped in favour of women.

I have been a supporter of equal rights for women all my life. I am disturbed and saddened that the vocal elements of the feminist movement oppose not only my right to better contact with my child, but an amendment to the law that would protect Katie's right to meaningful contact with her father.

Now I would like to make some specific comments regarding Bill 124.

In general, I am very pleased that the Attorney General has recognized that access denial is a major problem and has introduced a bill that, when passed, will provide the courts with the means to more effectively enforce access orders and, hopefully, reduce the incidence of wrongful access denial.

The provision for a hearing within 10 days of application is an excellent alternative to the time-consuming, costly and ultimately fruitless process of charging the delinquent custodial parent with contempt of court.

The remedy of ordering the access made up at another time where it has been improperly denied is an appropriate solution for many cases, but would not be deterrent enough for a serious repeat offender. Mr. Scott's provision in his earlier Bill 60 that would "require the responding party to give security for the performance of his or her obligation to give the moving party access" was a very sound proposal and one that I would encourage you, the members of the committee, to consider reincorporating into Bill 124.

I have a further proposal to make to address the problem of frequent improper denial of access. The seriously delinquent custodial parent should be warned after a given number of improper denials that he or she will lose custody of the child if the incidents continue. If the improper denials continue, the access parent could then apply for custody to be transferred to him or her and the courts would be able to order the change. I would ask you to seriously consider adding this proposal to the amendment.

Regarding the reasons for legitimate denial of access, although the best interests of the child would be served by the prevention of contact with a



parent who is obviously impaired by alcohol or a drug or who is threatening physical abuse, the grounds that the child may suffer emotional harm are far too vague and open to such wide interpretation that it could quite easily become an indefensible weapon for a vindictive custodial parent. I would recommend that the grounds that the child may suffer from emotional harm be removed from Bill 124.

That access may be legitimately denied if the child is ill is also a very dangerously open-ended provision. I fundamentally disagree that a parent should not be permitted custody of his child when the child is sick. What more appropriate time is there for a concerned, caring parent to interact with his offspring than when they are not well? A conscientious, loving parent would never insist on removing a seriously ill child from the custodial home against a doctor's or the custodial parent's wishes; but an unscrupulous custodial parent could easily misuse the grounds of illness for access denial if the child has a minor illness such as a cold or stomach ache, or indeed by asserting that the child is unwell even if he or she is not.

I will stress and repeat: The grounds that a child is ill are far too open-ended as a reason for access denial and I would encourage its deletion from Mr. Scott's amendment.

The provision that the courts will be able to order a mediation process to help the parents deal with the cause of access difficulties is an excellent recommendation. Bill 124's statement of principle that parents shall encourage and support the child's continuing relationship with both parents is important and critical to the success of the healthy parenting of children after separation and divorce.

My mother and father, Katie's grandparents, are elderly and their health is becoming increasingly fragile. They have a total of 21 grandchildren and 10 great-grandchildren. My mother has seen Katie briefly on two occasions. My father, and the majority of my seven brothers and sisters, have never seen my little girl.

My primary concern, of course, is Katie's right to a real and comprehensive relationship with me, her father, but a secondary concern for me, and indeed for all access parents, is our children's right to a meaningful, ongoing relationship with their second set of relatives, especially their grandparents. My mother has shed too many tears over our denial of access. Meanwhile, Katie's maternal grandmother is acting as a nanny for my daughter and enjoys unlimited access to her, as do all of Katie's maternal relatives.

I would suggest that the committee consider inserting another principle, if not an outright provision, that the rights of a child to his or her access relatives, especially his or her grandparents, be guaranteed.

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I have one further recommendation that I would like you to consider. MPP Dr. Jim Henderson has proposed a further amendment to the Children's Law Reform Act, Bill 95, which would guarantee the presumption of rebuttable joint custody of children upon the breakdown of marriage. Bill 95 is apparently languishing in the Legislature, as most private members' bills do, and has little chance of soon being considered for passage by the government. I think the principle of the presumption of joint custody is not only fair and humane, but a completely viable solution for most parenting arrangements after families break up.

I exhort you, the members of the standing committee on social development, to review Bill 95 and consider making the courageous decision to incorporate the principle of the presumption of joint custody into Bill 124.

My daughter Katie is a very special and important person to me. I love her very much and wish to participate fully in her life. Over the last two years, I have been denied all but minimal contact with her. I feel that my daughter can benefit greatly from the increased contact I seek with her and that Bill 124, with the enhancements that I propose, would better protect that access. Thank you very much.

Mr. Chairman: Thank you. It must have taken some courage to come before a public forum to present those views. Questions from members of the committee?

Mr. Cousens: I am concerned about the time.

Mr. Chairman: We have two minutes.

Mr. Cousens: I appreciate the candour you have shown here. I am not going to ask questions because I think you have addressed the concerns I have.

Mr. Carrothers: Just very quickly, thank you for this presentation. You talk about joint custody. Since that implies, obviously, people working together to make that work, and the cases that we have heard with problems of access seem to indicate there is no co-operation, I just wonder how joint custody might improve the situation.

Mr. O'Marra: It would not improve my specific case. There is far too much belligerence. I probably would not even apply for it because it would not be granted to me with the present state of the law. I think my case is a bit extreme, but I think in general it would be good for most arrangements.

Mr. Chairman: Thank you very much for coming before the committee and sharing with us your views on this legislation.

Our next presenter is George Lloyd. Welcome to the committee. You have 15 minutes to make your presentation. You may leave some time for questions from members of the committee if you wish. I would caution you against referring to personal matters which may be before the courts or may appear before the courts. That is for your own protection.

GEORGE E. LLOYD

Mr. Lloyd: Thank you. Ladies and gentlemen of the committee, I am most happy to be given the opportunity to speak to you here today. In principle, I am in favour of most of the basic concepts of Bill 124. This bill has been referred to by the Ministry of the Attorney General as a bill for access enforcement. However, this bill does not achieve that purpose.

In his opening remarks on Friday, Mr. Cochrane indicated that the only course of action to enforce a court order for access for a noncustodial parent is to initiate a contempt-of-court proceeding, and he as much as admitted that this did not work. I do not believe that Bill 124 adequately addresses this problem. I would like to see amendments to the bill by which access orders could be meaningfully enforced. After all, this is the stated purpose of the introduction of the bill by the Attorney General (Mr. Scott).

My daughter celebrated her sixth birthday last month. I have not seen my daughter in two years.

Before one begins to deal with children's law, one generally has to deal with a family breakup in the form of separation or divorce. I have always assumed that whenever one is accused, one has the right to defend oneself or be defended in court. I was to learn otherwise. I was not allowed to respond to the divorce petition or to defend myself in court. When the case was before the court, I was pleading to be allowed entry into the courtroom in order to defend myself, all to no avail. The divorce took place without any input from me being allowed.

With seven out of eight contested custody awards going to the mother, the father has little hope. When one is denied access to the courtroom, the father has no hope. At this point, all I am asking is that I be treated with equality before the law. Although it is perhaps beyond the mandate of this committee, I would urge all members of this House to take whatever steps are necessary to prevent any court in the country from denying anyone the right to be defended in court.

Once I was allowed to appear, I naturally applied to the court to grant me access to my infant daughter. The court issued an order for access which was as specific as human language can possibly make it. Nevertheless, I was soon to learn that this order is unenforceable. There is, in fact, no such thing as a court order for access which is ultimately enforceable. Mr. Cochrane admitted as much in his opening remarks on Friday, and I do not believe Bill 124 adequately addresses this problem.

In order to evade a court order, one can simply move away. For reasons unknown to me, my wife was denying me access to my daughter. My wife and daughter have disappeared. It seems as though there is nothing I can do about it. Lawyers are unable to enforce the order. So are the police, who refuse or are perhaps unable to enforce the law.

Bill 124, again, does not deal with this problem. This is nothing less than child abduction, and in this case, it is quite legal. I do not believe that child abduction by anyone, including the custodial parent, should be legal. We need amendments to the Children's Law Reform Act in order to reflect this concept. Only in this way can the best interests of children be served.

There are areas of Bill 124 which, frankly, I find quite insulting. I am speaking here of the bill's desire to grant to the custodial parent the right and power to deny access. What we are forgetting here are the best interests of children. This is the fundamental principle of children's law. When a court issues a court order, it does so in the best interests of the child. This order, therefore, must be obeyed. The best interests of the child are served by having in place a method by which a court order can be enforced. To give to the custodial parent the right to override the decision of the court is, I believe, quite wrong. For a court order to be obeyed, it must be enforceable, and anything less would deny children their basic fundamental rights.

This particular aspect of Bill 124 is virtually unchallengeable by the noncustodial parent. It gives to the custodial parent the right to be a judge and jury and further erodes the noncustodial parent's presumed right to defend himself.

The bill guarantees that there will be a court appearance within 10 days of an access denial. I fail to see how this is enforceable.



This committee is called the standing committee on social development. There can be no possible social development unless there is a method in place by which social laws can be complied with. It took me fully eight months of hard fighting just to gain access to the courtroom. Are you trying to tell me that I can now gain access to the courtroom in 10 days? I find that difficult to believe.

In order to exercise my court-ordered access rights, I have to travel some 500 kilometres. Even such a trip as I made in order to appear here today is very difficult. In cases of repeated access denials, it is out of the question both logistically and financially.

I approve of the requirement in Bill 124 that the custodial parent reimburse the noncustodial parent for expenses incurred when access is wrongfully denied. This is quite laudable but, again, unenforceable. In no way can this be interpreted as doing anything at all to enforce a court order. However, I do approve of the idea.

I also approve of the idea of compensatory access, but unfortunately in my own particular case the respondent has disappeared and the service of relevant papers is quite impossible. There can therefore be no possible court appearance, and this too is unenforceable.

When access is denied, the usual course of action is a contempt-of-court proceeding, but Bill 124 would appear to possibly remove this action. In addition, when access is repeatedly denied, Bill 124 provides for no recourse whatsoever. As long as custodial parents are allowed to take the law into their own hands, noncustodial parents have no recourse at all. They are presumed guilty, and this is a denial of fundamental principles of justice.

Recent changes in family law have worked wonders for support and custody enforcement. The support and custody enforcement agency has very effective methods for locating defaulting parties, but it is very sad that it is prevented by law from doing anything at all to locate a defaulting custodial parent. This is most unjust. In fact, if Bill 124 were to become law and my wife and daughter were found, it would be even more difficult for access to be enforced than it is now, since the bill gives to the custodial parent the right to override the decision of the court. Under these circumstances, Bill 124 is virtually a blueprint for how to break the law.

1400

I would like to touch momentarily on the subject of grandparents' rights. Suffice it to say that grandparents do not have the right of access, contrary to the opinion of Mr. Offer and section 21 of the present act. If the noncustodial parent cannot obtain access rights, then obviously grandparents have no rights at all. The traditional role that is played in the life, care and upbringing of children by grandparents, I believe, should be recognized in law.

Suppose for a moment that this bill were the law of the land right now. It is virtually impossible to enforce a court order with a contempt-of-court action. Under the provisions of Bill 124, the court order still remains unenforced. The situation is unchanged. The court simply would, in effect, restate the original court order but take no action whatsoever to enforce it. The noncustodial parent is not helped in any way. This bill just erects a façade or a barrier in the way of the ultimate enforcement of court orders. After all this expensive and time-consuming litigation, the court order



remains unenforced. Bill 124 has been referred to by the Attorney General's office as a "bill for access enforcement, but in fact it is a bill for access denial.

I would like to point out one more area that I believe does need to be addressed. As part of my own particular access order I have been able to make very good use of the facilities provided by Merrymount Children's Centre in London, Ontario, as well as the facilities in the Lakeshore Area Multi-Service Project near here. These facilities provide a neutral setting for access to take place. I really cannot speak highly enough of the good that is accomplished by these organizations. They are very sorely underfunded.

If it were not for LAMP in Etobicoke and Merrymount in London, I would not have even been able to obtain an access order at all in the first place. It was impossible for me to exercise any access rights at all without the existence of a neutral setting in which to see my daughter. There is a very real need for these kinds of children's centres, a neutral place where an access exchange can occur. These centres provide many other services to children, and without them children would be losing out on opportunities to know their parents.

To sum up, I really believe we need a method in place for the enforcement of access orders, which are in fact the law. In addition, I reiterate what I said at the beginning: anyone, under any conditions, under all circumstances, at all times should be allowed and guaranteed the right to defend oneself in court. I have here a valid court order enacted by the highest court we have in this province. I feel quite confident in stating that there is nothing anywhere within the boundaries of this country that has less value than this document. We have a generation of children and noncustodial parents looking down upon us. Please, we cannot fail them.

This whole talk has been given without prejudice and with the best interests of my daughter in mind. Wherever you are, sweetie, you should know that your Daddy loves you. Thank you very much, ladies and gentlemen.

Mr. Chairman: Thank you, Mr. Lloyd, for your presentation. We have a few minutes left in your 15-minute time.

Mr. R. F. Johnston: I have one question, if I might, with maybe a comment to precede it. Thank you for the presentation, Mr. Lloyd, you and a lot of other fathers coming before us. It is a difficult thing to do. I understand and appreciate that. Unfortunately, we do not have any mandate over things like the Divorce Act.

Mr. Lloyd: I understand. I just wanted to make the point, however.

Mr. R. F. Johnston: I wanted just to focus in, if I could, on your comments about moving, because yesterday I noted that in the existing act there seems to be some kind of means of a court moving if it thinks there is going to be somebody who has access to the child leaving the province, but nothing if the person actually does leave the province and nothing at all touching a custodial parent leaving the province in terms of what the rights of procedure are afterwards.

From what I am picking up from your case, it strikes me that of all the changes we have made in legislation at the moment, something putting teeth in that area to enforce a court order that you already have and to get the authorities to find the other spouse would be of the most use to you, rather than any of the things that are presently listed in Bill 124.

Mr. Lloyd: That is true.

There is one other thing, and I really do not know how anything could be done about it. It is not particularly unusual for custody orders to include a provision by which the child cannot be taken out of the province. However, it is certainly not difficult to move a sufficient distance away within the province to deny access. I do not know how in the world I would be able to travel from Kenora to Kingston to exercise an access order. It is totally impossible, and yet the custody order would be completely obeyed. I really do not know how to deal with a situation like that.

Mr. R. F. Johnston: Under that, there have been some successful challenges in terms of when somebody moves. There has been a substantial, material change in the circumstances that in fact the courts have ordered people not to move distances which are not—

Mr. Lloyd: This is a denial of constitutional rights, however, so I do not know how to deal with that.

Mr. R. F. Johnston: It is outside what we are talking about, as well.

Mr. Lloyd: Yes, it is.

Mr. Daigeler: If you were here earlier, you know that a number of groups are arguing that this bill is not needed. Have you been in touch with other people in the situation that you find yourself in? Are you reflecting your own views? Are you reflecting the experience of what you feel are many people? Are you part of a group?

Mr. Lloyd: I have been in contact with a couple of groups which have spoken here today, but I feel that my own particular interests are served if I speak alone. Also, I am not in total agreement with some of the proposals that other groups may feel very strongly about. I do not necessarily feel as strongly as they do, so I have kept a slight distance from them. However, I am in complete agreement with much of the stuff that I have heard presented in the last few days, including many of the things that might go against what I say here today. There are very moving stories about child abuse, which is certainly not an issue in anything I have encountered anywhere. These are very difficult problems.

Mr. Chairman: Thank you very much for coming before the committee and sharing your experience and views with us.

Mr. Chairman: I would like to now call upon Shireen Hooshangi. Welcome to the committee. You have 15 minutes for your presentation. If you wish, you may leave some time during that 15 minutes for committee members' questions. I would also caution you, as I have cautioned all the others, to avoid making reference to matters which may be before the courts or which may result in a legal battle.

#### SHIREEN HOOSHANGI

Ms. Hooshangi: Thank you. The following are my submissions. Every lawyer who has practised family law would agree with the gruesome reality that the most emotionally draining and heart-wrenching cases in court are the ones where parents fight over custody of the children. When there is a very heavily contested custody case, almost always parents use children as pawns to get

back at each other. Even the most sadistic murder trials pale before the fight ensuing between parents when they indulge in the worst kind of mudslinging, which brings out the worst in the best of individuals.

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Bills 124 and 45 are steps forward in the right direction in the sense that, for the first time, the provincial government has accepted the fact that legal relief should be available to the parent whose access rights are denied. Until now, both the provincial government and the federal government have been fast asleep and they have never recognized the rights of the parents who were entitled to their visitation rights. It was almost always the sole custodial parent who was in the driver's seat and that parent had the upper hand.

But even Bills 124 and 45 are more or less like treating the symptoms, not the cause of the disease. Jim Henderson's proposed Bill 95 goes a milestone by providing that in the absence of evidence to the contrary, joint custody of the child by both parents is in the best interests of the child. Jim Henderson is trying to treat the cause of the disease, not the symptoms.

If both parents are equally fit, why should they not have shared or joint custody? Joint custody has been successful in the United States, Britain and many European countries. Even in the poorest of Third World countries, shared custody is the norm. In Third World countries, cases of parents being deprived of their legitimate access rights are unheard of. When marriages break up, instead of endless, traumatic, mudslinging court drama, respective parties endeavour to have an open dialogue in the presence of their elders and lawyers and sort out custody and access disputes in a more humane way, and the child ends up belonging to both the parents.

What are the pros and cons of joint custody versus sole custody fights? Before I elaborate on that, I want to emphasize that I am here solely to speak on joint custody, because having worked as a lawyer for the first 10 years of my career—I graduated in 1968; between 1968 and 1978 I was assigned as a permanent duty counsel in a senior capacity at the family court—I saw murder and suicide cases at first hand when I used to work there. How did these murder and suicide cases take place? Because both the parents were throwing mud at each other on custody issues.

Having seen that, witnessed that at first hand, I feel strongly that if the government implemented joint custody permanently into the legislation, it would stop spending millions of dollars. Even more important, it would create an emotionally healthier society, because eventually the people who are the real sufferers are the children.

What are the pros and cons of joint custody versus sole custody fights? Statistics would reveal that young offenders who graduate into adult criminal courts by lingering in overcrowded jails often come from broken homes led by single custodial parents. Statistics would also show that when parents share custody, there is less likelihood of children becoming emotionally disturbed, because these children have the love and security of both parents on an equal basis.

As a lawyer, having worked for 10 long years in family court, I have had some young kids tell me how much they have hated that single custodial parent and how much they have missed the other parent. The other parent usually happened to be the father, whom the kids never ever saw.



I have had some young kids tell me how much they have hated the custodial parent and how much they have missed the other parent, i.e., the father, who had given up the visiting rights due to the adversarial system. I have had so many of these long-forgotten fathers tell me that due to the eternal hassle from the custodial parent about visiting rights, they end up either not paying maintenance orders, quitting their jobs or even skipping the jurisdiction.

Statistics also reveal that the majority of abductions by fathers were triggered in the following instances: during the legal process of a highly emotionally charged, heavily contested custody battle; subsequent to the victory of a custodial parent acquiring sole custody of the child and due to the fact the father still has not recovered from the damaging after-effects of the mud-slinging fight in court; after the constant denial of the father's legitimate visitation rights due to vindictiveness on the part of the custodial parent. Once again, murder and suicide incidents are common when custody is fought on a heavily contested basis.

Most group homes, foster homes, mental institutions and overcrowded prisons prove beyond doubt the stark reality that most of the adults in these institutions were once kids from broken homes led by single custodial parents. If one visits the overcrowded prisons, one finds that the majority of the criminals who come from broken homes led by single custodial parents, being questioned about their family's whereabouts by the judge, give the same stereotyped answer, "I lived with one parent because my parents are separated, but I have never known my other parent because I have never seen or heard from the other parent for the past several years." Usually, the other parent happens to be the father.

Who are the spouses who do not pay support on a regular basis? They are the ones whose visitation rights are violated. Why does the provincial government spend millions on the support and custody enforcement branch of the Ministry of the Attorney General trying to enforce support payments? Is it not because Canadian society is decades behind many other countries, including even some of the poorest Third World countries, by refusing to implement joint custody into legislation?

A government that spends millions in treating the symptoms refuses to spend a fraction of that cost on the cause of the disease. Prevention is better than cure; remedy is worse than the disease. Is the provincial government going to try to treat the cause or just continue keeping the symptoms, continue spending the millions and continue having emotionally disturbed kids? In order to have an emotionally healthier society, joint custody is the only solution, unless one of the parents has physically or sexually abused the child.

Mr. Jackson: In the very last couple of paragraphs of your presentation you made the statement, as a question: "Who are the ones not paying the support? They are the ones who are denied access."

Ms. Hooshangi: Yes.

Mr. Jackson: Has your experience shown you in any statistical way that in fact the denial of access occurs first and support payments are then withheld?

Ms. Hooshangi: In the majority of cases where there is chronic



delinquency of the payments, when the husbands or the fathers owe huge sums of money, they have not been able to visit their children.

Mr. Jackson: If I can just get further clarification—

Mr. Chairman: Which came first, the chicken or the egg? Is that what you are asking?

Mr. Jackson: It was presented in that fashion. I just want to put a fine point on this for the purposes of the understanding of this committee, and that is, are you suggesting that the withholding of payment occurs first and then access is denied, or that access is denied first and then the noncustodial parent begins a process of nonpayment because access was denied? You made a very general statement and I want to understand exactly what you meant by it.

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Ms. Hooshangi: In the majority of the cases, access is denied first, but there are some rare instances where, even though the man has been granted access—for the sake of fairness, I have to quote the facts—the man refuses to pay. In the majority of the cases, he is saying, "Well, if I don't get to see my child, why the hell should I pay?"

Ms. Poole: As I am sure you are aware, the intent of Bill 124 is to deal with access and custody after the order has been granted by the court and it really is not meant to deal with the issue of joint custody. Notwithstanding that, I would like to ask you a question about the joint custody.

Indications so far appear to be that joint custody has by far the best chance of working when it is entered into on a voluntary basis by both parents and there is this co-operation between them. In fact, there seem to be disturbing indications from California that when it is imposed by the court, it does not in fact have that good a chance of working. I wonder if you would like to comment on whether you think the voluntary aspect of joint custody is important.

Ms. Hooshangi: If joint custody is imposed on the parties through mediation facilities—I am taking it for granted that before the joint custody order is incorporated into whatever relief they are seeking, they have had extensive mediation and conciliation facilities—then whoever presides over those mediations can educate the parents into accepting the fact, "Look, do you want to have a healthy kid or do you want to have an emotionally disturbed kid?"

With extensive mediation and conciliation facilities, I do not see any reason why there should be a problem. Instead of going to court and throwing mud at each other and spending millions of dollars on litigation, I think they could spend a fraction of that by having professional people head those mediation facilities and educate them: "Listen, you have these two options. If you go for joint custody, try it and you will have a healthier kid. What is more important? Your own ego or the child?"

I am assuming it is done first through mediation, because with the present climate in Canada, from what I read and what I see, and even in the legal profession not many lawyers are for joint custody, it is going to be difficult to educate everyone. I am assuming the government will be spending

some money on mediation resources and then trying to educate not only the public but mainly the parties and say, "You've got two options."

Ms. Poole: Is there time for a supplementary?

Mr. Chairman: No, there is not.

Thank you very much for coming before the committee and sharing your views with us.

Our next presenter is Robert Desbois.

Mr. R. F. Johnston: On a point of order, Mr. Chairman, while we are waiting for the witness to come forward: This dearth of statistical information has been a frustration for members. I have just come across a 1987 report by C. James Richardson on custody and the Divorce Act, in which he deals with some of the issues we are dealing with. I wonder if we might be able to get hold of that particular study to see whether, even though it is on the federal Divorce Act, it has a statistical base that would be of interest to us in terms of enforcement of access.

I found it in a draft of a letter to the Attorney General (Mr. Scott) from a law firm here in Toronto, which I think, by the nature of the letter, is responding to a request for a legal opinion on this Bill 124 we are dealing with. It gave an interesting legal opinion of Bill 124 last January.

I was wondering if the Attorney General's office, through the parliamentary assistant, might also make available to us any of the legal opinions that were sought and received. I only have a draft of this one, which it would be inappropriate for me to share with the committee, but if we cannot come up with the actual ones, I would be more than happy to share this one with the committee because of its particular point of view, of course.

Mr. Chairman: I am not sure that is a point of order, but you have made your point, if you know what I mean.

Mr. R. F. Johnston: I am sure they will get those for us.

Mr. Chairman: I am sure we will get a response in due course.

Mr. R. F. Johnston: Give them time to think of something good.

Mr. Chairman: The request for information can go in both directions, to the parliamentary assistant and our researcher, and we will hear back, I am sure.

Mr. Desbois, welcome to the committee. You have 15 minutes to make your presentation. If you wish to leave some time for questions, that is your option. We caution you against making reference to matters that may appear in the courts.

ROBERT DESBOIS

Mr. Desbois: Thank you very much for letting me speak here today. I would like to start off by saying that I probably will not be using all the 15 minutes, so I think there will be more than ample time for questions.

I would like to start off by saying that Bill 124 touches my family and myself very personally. Bill 124 deals with a very emotional issue, not only for myself but also for most of the people who have spoken and will be speaking to you. I can also tell you that I feel a great deal of reluctance to actually be here and publicize my affairs. However, I feel that the grief the present legal system is causing my family, including my daughter, is the reason for my appearance here today.

Although the events that have occurred to me in the past are probably not as dramatic as some you have heard of or probably will be hearing of, or certainly some of the events that have come up in the debates I have read, they are none the less situations I believe are important. The events I am referring to are situations that have an impact on a child in the longer term, as opposed to short-term problems, many of which can be easily addressed with the appropriate legal formula.

I can tell you that my daughter has on numerous occasions asked to remain with us during her visits. That has always been a problem for us. My daughter has also suggested on a few occasions that she would like to stay with us for periods of time that are longer than what has been available in the court order.

I would like to just start off with that and go on to some of the conclusions that I can draw from my own personal experience.

I think most of us will agree that the denial of access is only a symptom of a larger, underlying problem. This problem may originate with either or both parents. Currently, there is no mechanism to identify or deal with this underlying problem adequately. If the law is to help resolve these unfortunate circumstances, all underlying problems, whether they be short-term or long-term, must be addressed and must receive equal consideration. Long-term problems, for example, the systematic poisoning of a child's mind by the custodial parent, may ultimately result in greater harm to the child than many short-term problems.

Children and parents often find themselves in stressful and frustrating situations. These situations are fuelled by mistrust that has been aggravated by the confrontational style of the legal system. The court system often results in accusations, and obviously, subsequent mistrust. The existing system does not encourage communication and co-operation since there is a lack of incentive, and even a disincentive, for the custodial parent to communicate. The only recourse that is left for the noncustodial parent is the court system. I do not believe Bill 124 addresses these issues.

Friction, which is due to the continuing personal contact during the exercise of access rights, in my opinion is the single most damaging occurrence for all parties concerned and is especially so for the child. Sexual abuse and violence are criminal offences and should be treated as such. Criminal offences should not be accepted as arguments against wider access rights, because such arguments treat all fathers as criminals and needlessly punish children who are fortunate enough to have caring parents.

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The recommendations that follow are made with the sincere belief that they will result in improved relations between parents and ultimately benefit the child. They are made without prejudice.



A mechanism should be established to identify underlying problems that are causing access difficulties. This mechanism should be provided by counsellors or agencies that are trained to deal in such matters. To do anything less is analogous to treating the symptom while letting the disease grow rampant.

Long-term problems such as the systematic poisoning of a child's mind must be addressed. Although Bill 124 addresses this issue in principle by stating the duty of each parent as "...each shall, in the best interests of the child, encourage and support the child's continuing parent-child relationship with the other," there is no provision made for enforcement. This problem is magnified by the relatively little time the child spends with the noncustodial parent. In some cases, there is no time at all in fact. Within a framework of mediation, the concept of compensating time should be expanded to include such breach of trust.

Confrontational situations should be eliminated or at the very least minimized by discouraging recourse to the legal system. Communications are essential to resolving access problems. Disputes can be minimized by encouraging, and if needed, forcing parents to seek mediation. Where there has been a complete breakdown in communications, this should provide an incentive for custodial parents to communicate and would provide some alternative recourse for noncustodial parents. If one parent is afraid or is of weak character, mediation is still better than either the court system or one on one in the street.

The existing law should try to eliminate the potential for friction by eliminating or minimizing contact during the exercise of access rights. This could easily be done through the existing school system, possibly, or through the pending day care system at a minimum cost to the taxpayer.

Upon allegations of violence or sexual abuse, an assessment should be made of the situation to establish whether or not the allegations have any basis. Existing laws should be used to deal with such offences.

Mr. Cousens: I have a number of amendments coming forward for the committee to discuss at some future time regarding the whole mediation process as it could be amended to bring mediation to a better understanding of making this bill work. Yet this morning there were presentations by some people with very good points to present on how mediation could never work because one party was usually at some disadvantage.

What is your feeling on mediation? Have you ever seen it used? Has it ever been seen to work? Is it something that in your own mind could have been helpful in situations that might have been close to you?

Mr. Desbois: I can tell you that in my situation there is a total communications breakdown. The only recourse that is left, as the system exists now, is obviously recourse to the courts. Bill 124, as it stands, is exactly the same situation. I do not particularly like that option. As a matter of fact, in my opinion it should be the opposite that should be sought.

To answer your question of whether or not I have ever seen it work, the answer is no. I can only tell you that the existing system and what is being proposed with Bill 124 is a recourse to the courts. That, in my experience, has only led to a tremendous amount of mistrust, has contributed substantially to the communication problem and has led me to recommend that mediation of some description—I might add even forced mediation in some



circumstances—might be a way of opening up the channels of communication. Without communication, you just cannot get a settlement.

Mr. R. F. Johnston: Just to carry on here, in struggling with this problem, especially with things like forced mediation, which in my experience in other kinds of jurisdictions around us just does not seem to work very well, mediation seems to me to be something in this process that needs to be done before the original custody access decisions are made, if it is going to happen, not at the stage of aggrieved enforcement problems. It seems to me at that stage you are dealing with protagonists who are not going to be very good at mediation. I have been thinking much more in terms of something else you were raising as an option.

Court-ordered supervision in locations like the one or two examples we seem to have in the province, having those facilities more available around the province and having counselling there for the individual parents so that professionals can, on an ongoing basis, assess how they are doing and if they are using the child one way or the other as a pawn in all this is perhaps the most practical way of dealing with these most intransigent cases which seem to be the ones we are hearing about in terms of the enforcement problems, rather than expecting these people who have not talked for years to suddenly sit down with a mediator and start to talk in a way that is going to be meaningful. Can I ask you to weigh the balance of those things?

Mr. Desbois: Obviously that is not a question; it is a comment. I would have no problems with agreeing with what you are saying, simply because right now we just cannot communicate. Certainly with face-to-face communications through a mediator there may be some problems initially and there may be some ongoing problems.

There are two points I want to make: On the one hand, mediation may be better than any alternative; on the other hand, communications through a third party are probably better than a confrontational situation through the court system as well. I would have a tendency to agree with both.

Mr. R. F. Johnston: You do not see them as mutually exclusive.

Mr. Desbois: No.

Mr. Chairman: You still have two minutes. Would you like to make any closing comments?

Mr. Desbois: No.

Mr. Chairman: Thank you very much for coming before the committee.

Our next presentation will be from Christina Benson. Ms. Benson, welcome to the committee. You have 15 minutes to make your oral presentation. You may, if you wish, leave some time for questions from members of the committee. We would caution you on referring to matters which could be before the courts; it is for your own protection that the caution is given. Proceed.

#### CHRISTINA BENSON

Ms. Benson: My name is Christina Benson. I am the mother of a nine-year-old boy. I have been the defendant in a continuously litigated custody case in the Supreme Court of this province since 1984. I now consider myself to be an expert on family law by virtue of hands-on experience.

To establish my credentials, I would like this committee to know that I have been before every judge in the family law division of the Supreme Court. I have seen half-a-dozen mediators, including the often-quoted Judith Ryan. I have been through several assessments with my son. I have in my life not only my child's lawyer from the official guardian's office, courtesy of the Attorney General (Mr. Scott), but a social worker from that office as well. One time several years ago, I counted 38 court orders in my life and then stopped counting. I think I am what is called a problematic case in the family law system.

I am here to tell you some grim things. Family law in this province is a disaster. Family law in this province is so sexist and so biased against women that the correct term to describe its workings is probably gender apartheid, not gender bias. Family law in this province is a system so flawed by personal whim, prejudice, irrationality, lack of rules, lack of procedures, lack of direction, acceptance of vindictiveness as the norm and contempt for women and their children that it is a pathology and not a law or a justice system.

I would like to say to you right at the outset that the bill before you represents the same stupidity and the same sexism that presently constitute family law in this province and that, if it is approved, it will make for even more misery than already exists. I am here too to warn you that this bill is extremely dangerous, because it is a significant step in the growing structure of a police state that we are, I hope unwittingly and unknowingly, creating to control the lives of individuals in our society in the name of family law.

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I am making these comments to you out of some unpleasant experiences in my own life. I am, as some of you may know, the parent who was ordered by the chief family law justice of this province not to discuss her case with anyone or, to be more precise, "expressedly forbidden to discuss any details that touch on this case with any third party." This order carried an endorsement for "usual police enforcement."

In case you are wondering what terrible things I said to warrant such an order, there was nothing as dramatic as anything I have said to you in this introduction. I simply wrote a couple of letters complaining about what was happening to my child and me in the course of this case. I found it and still find it hard to absorb the shock of tens of thousands of dollars of costs for this case, the interference of dozens of social workers and court officials in our lives, the innumerable years of court hearings and appearances, the endless hours of preparation of legal work and all the misery this caused my young son without wanting to tell everyone how terrible all of this was.

I would particularly at this point like to address an assumption that I heard presented to this committee yesterday by the parliamentary assistant to the Attorney General, the member for Mississauga North (Mr. Offer). The assumption was that original custody and access decisions in our courts are arrived at by full due process of law, resolved in some reasonable and expeditious manner in a proper trial of the issue and that all this bill before you deals with is enforcement of duly established access. The reality of family law is completely otherwise.

Judicially litigated custody cases go on seemingly for ever by virtue of all the procedures available—motions, hearings, hearings in chambers, mediation efforts, ordered assessments and pre-trial conferences—that simply act often to start another round of the same previous round. I would like this

committee to understand that after five years in court there has never been a trial of the issues in my case. I think that this is the norm of family law.

Almost everything I would like to say to you about this bill has been, in my opinion, more than adequately presented by the Ad Hoc Woman Lawyers Committee and the National Association of Women and the Law. I encourage you to consider their comments seriously.

There are three specific comments I would like to make to you about this bill. In a country where we are an international scandal for the number of children who live in poverty, largely in single-parent families headed by women, and in a province where in this year's budget 58 per cent of our social assistance money will go to children, the fact that anyone would suggest imposing financial penalties for personal parental behaviour related to children of divorce is obscene.

The removal of past behaviour as a consideration and factor in determining parental quality deserves serious study. We are suddenly placing the burden and the cost of both defining and proving what constitutes relevant behaviour for parents as it affects children on the shoulders of individuals, who will in most cases turn out to be poor women, and subjecting this entirely to the discretion and the judgement of individual judges. Proving aberrant behaviour and its relevancy to parenting has suddenly become an expensive personal burden. This is a perversity of collective social responsibility and an illogical and unnecessary extension of our no-fault divorce system.

Suddenly allowing the claim that violence is a consideration of parenting ability, in the context proposed in this bill, is a crass political manipulation of the worst sort. The reality is, as this Attorney General knows full well from all the submissions made to him, that we still face horrendous legal difficulties in establishing evidentiary proof of violence. After all, who beats up his wife or children in broad daylight in the presence of two credible witnesses, leaving proper evidence, such as broken bones, in order to satisfy court requirements of proof? For your information, two credible witnesses for court purposes would be two police officers.

This acknowledgement of the significance of violence should in fact have come years ago, but come as an entirely separate bill with attention, consideration and direction given to the problems of providing legal proof of violence, and carried with it direction and instruction to the police, the social service network and the medical and educational professions on the necessary procedures for documenting and establishing proof of violence.

I think that someone should say to this committee that this bill is an expedient and cynical tit for tat in that by finally allowing for some small measures to recognize the fact that children are entitled to financial support, we are now going to allow supporters all kinds of extraordinary legal privileges to their children and extraordinary legal opportunities to impose these. This committee should wonder why the bill for support did not carry any provision that defaulters could be brought before a judge within 10 days of default. This might have been a truly child-focused effort.

The reason that this committee is hearing such uniform opposition to this bill from women's groups is the fact that women's groups know that this bill is a deliberately punitive measure for women and their children and is a price that is being exacted for support. This bill will impose costs, both



financial and in terms of time, and restrictions on the lives of women and children.

What I would like specifically to speak to this committee about is the fact that this bill reflects an extremely dangerous trend in our society. We are, I believe, inadvertently setting up the mechanism of a police state of control of individuals by relegating so much of the regulation of family life to the courts. According to our statistics and projections, more than half of us will be encountering family law in our lives because of divorce by the end of this century.

In our ordinary lives we are going to be seeing lawyers, court officials and judges to decide how we intend to live. We are going to be regulated in our ordinary lives by a high degree of judicial order that is police-enforced. We are introducing the idea that ordinary family actions can become criminal matters and subject to criminal punishment, which is imprisonment. We are making factors of human interrelationships and interdependencies subject to criminalization.

I would like this committee to know that this is already happening. We are sending mothers and fathers to prison for not paying support. We are imprisoning women for trying to see their children. We are accepting it as normal that there be legal restrictions—five, 10, 15 minutes, whatever a judge determines—on the length of time we are allowed to speak to our children. If we continue in this way, we will soon be considering prison for parents who disobey such restrictions.

We are already using the police to move children against their will from one house to another when there is a breakdown in communication over access or custody. We are already raising a generation of children who only know that their parents cannot move, speak or walk in certain places because of a judicial decision and that the penalty for disobedience is contempt and finally prison. This is no way to run a society unless achieving Orwell's 1984 by the year 2001 is our social objective.

The issues of families are very complex in our time. What we need to be considering and asking ourselves is what we intend to do to deal with these matters and why we have fallen into the assumption that the law and the courts are the places to deal with them. Does this committee, does this House, do we as a society believe and agree that our relationships are best regulated by law, in the hands of lawyers and judges, individuals who are mostly men, mostly middle-aged, mostly white, mostly Protestant, mostly Anglo-Saxon in tradition, and individuals whose basic training is in tax and corporate law or as crown attorneys or whose appointments to the bench are a reward for political loyalty? Is this sane?

Practically, we need to be extremely concerned about the fact that we are leaving so much power and control in the hands of a profession that is notorious for its intolerance of criticism and is seemingly incapable of self-examination.

Mr. Chairman: I do not want to interrupt this delegation, but I notice that you have quite a few pages to go and four or five minutes left. I am wondering whether you might want to go to your recommendations.

Ms. Benson: I think I will leave the recommendations for the committee to review.



Mr. Chairman: Carry on then.

Ms. Benson: I do not know how much you know about the structure of the law profession, but it is a self-governing body regulating itself through the Law Society of Upper Canada and its elected governing body, benchers, where matters of behaviour and policy are set by the discipline committee.

When Clayton Ruby, a bencher, made precisely the same comments about the judiciary that I just quoted to you, he was taken before the discipline committee of the law society and removed from the committee that reviews judicial appointments for lacking proper objectivity in making a useful contribution to the selection of judges.

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It is tremendously important that we all become more aware, more informed and more sophisticated about our legal structure and how it works and what its purpose is. We need to become sophisticated enough, informed enough, to be able to discern, detect and decode propaganda when it is presented to us in the name of family law. We need to learn to separate fact from myth.

I noticed yesterday the displays that stated that denial of access was the worst abuse. This is the kind of nonsense that permeates discussions of family law. The reality is that denial of access is just that: denial of access, probably painful and sad, resolved by children eventually growing up and exercising free will. But it cannot be called abuse. Hunger, poverty, lack of heat and clothes are abuse for children.

The reality is that the leading cause of death in the United States for children under the age of one is homicide, deliberate murder. This is abuse. A walk through the wards of our Hospital for Sick Children to see babies, young children and adolescents bandaged and painfully dazed from beatings and sexual assault is abuse.

I do not think anyone can propose any easy solution, but I think this committee should reject this bill because it is part of the worst solutions available to us.

As you all have a copy of the rest, I will leave it.

Mr. Chairman: I think you have time to finish up to the recommendations.

Ms. Benson: I would like to quote Michele Landsberg for you from her introduction to a book I hope the members of this committee will read. I will mention the book and the author in my recommendations to you.

"The new 'equality' as defined by middle-class white men who dominate our legal system has forced more women and children into poverty and helpless court-ordered submissions to violence and abuse than even the most brutal male supremacist could have wished for."

This is what this bill is about; this is what women are trying to tell this committee. Instead of considering this bill, this committee should be scrapping it and urging both the House and this Attorney General to undertake research on the real needs of children for safety and security; research to examine our reliance on the legal system for establishing family policies for our society and the appropriateness of this; research on the validity of the

claims of women that the law is so patriarchally structured that it can never provide justice or benefit for women, and research on the linkages between family law and the increasing feminization of poverty.

If we do not start to question some of the assumptions that exist behind the provisions of this bill, I think we may soon see a day when we will not have the right to question any assumptions.

Mr. Chairman: Thank you.

Ms. Benson: I am sorry I went through my time.

Mr. Chairman: No, you were right on. I apologize for interrupting. I just wanted to give you that option if you wished to go to the recommendations. I realize it is hard to read and keep an eye on the clock at the same time. We members have trouble doing that in the Legislature sometimes.

Ms. Benson: There are recommendations attached to this that I hope this committee will take seriously.

Mr. Chairman: Thank you for coming before us today.

Mrs. Cunningham: Mr. Chairman, can the recommendations somehow get into Hansard, or do they always have to be read in?

Mr. Chairman: No, they are part of the report. They are not in Hansard.

Mr. R. F. Johnston: I think the steering group agreed that we would be adding to the report a list of all the recommendations that have been presented to us and footnoting who they came from. In that way, they will be with the report of the committee, but unless they are read into Hansard, they do not actually go into Hansard. We could move a motion, I suppose, that they be, but that is very unusual.

Mr. Chairman: They will form part of the record of the research.

Our next presentation will be from the London Co-ordinating Committee on Family Violence, and representing this organization, Marion Boyd. Welcome to the committee. You have one half-hour. You may use that entire time for your presentation or leave some time for questions. As I have done with other groups, I caution you against making specific reference to cases which may be before the courts.

#### LONDON CO-ORDINATING COMMITTEE ON FAMILY VIOLENCE

Ms. Boyd: Thank you very much. My name is Marion Boyd and I am executive director of the London Battered Women's Advocacy Clinic. I am here today as a representative and a member of the London Co-ordinating Committee on Family Violence.

Over the past decade, the community of London, Ontario, has been recognized as a leader in Canada in providing services, research, innovative programming and co-ordination to meet the needs of families where violence occurs. The London Co-ordinating Committee on Family Violence consists of representatives from over 20 agencies and professional groups whose focus is the elimination of wife assault.

The committee has established goals to:

1. Promote co-ordination between the criminal justice, mental health, medical and social service systems;
2. Evaluate the effectiveness of community responses in reducing family violence;
3. Ensure a consistent approach to family violence among member organizations;
4. Actively promote community education on the issue of family violence;
5. Increase awareness among professionals in the area of family violence; and
6. Provide a centralized intake and referral point for the collection and dissemination of evidence about family violence.

As a leader in the provision of such co-ordinated services for battered women and their children as well as for batterers, the committee has grave concerns about the proposed changes to family law in Bill 124, An Act to amend the Children's Law Reform Act.

It is our understanding that the genesis of this bill was a response to the lobbying of fathers' rights groups from across this province. Although we do acknowledge that there are problems with custody and access arrangements as they exist, we have not seen any conclusive evidence as to the nature or extent of these problems. Indeed, disputes requiring court decisions appear to occur in only about 15 per cent of separations or divorces when child custody is at issue. Moreover, we see the bulk of the proposed amendments being considered in this bill as neither equitable nor viable solutions to the custody and access problems experienced by families torn apart by violence and abuse.

The safety, security and wellbeing of battered women and their children must be of paramount importance when considering any amendments to family law. Those of us who have done research and/or worked extensively with battered women and their children know the very real danger that they are in, not only during violent marriages but after separation. We also recognize that battered women and their children are vulnerable not simply to their husbands' or fathers' violence but to economic hardship and to those decision-makers who are uneducated about wife assault and child abuse.

The consequences of both legal and public policy decisions have profound implications for the safety, security and recovery of battered women and their children. Although great strides have been made in the recognition of family violence as a serious and widespread social problem, there is still much work to be done in the criminalization process, in the provision and co-ordination of appropriate services and in the education of professionals about the causes, symptoms and remedies for family violence.

Before beginning a closer examination of the bill, I want to acknowledge that the community of London is an exception rather than the rule in the provision of a broad range of co-ordinated community services for families where violence occurs. Even though the co-ordinating committee and its members do their best to encourage and assist other communities to develop similar responses to family violence, most communities have been unable to obtain

sufficient funds to put forth such a concerted effort. Equity of services across the province is a prime concern for us all. Equitable services are not available, and this major concern underlines our specific comments on this bill.

I would like to move into a critique of Bill 124 itself and start with subsection 20(4a), the so-called duty clause. This section states that it is in the best interest of a child for a custodial parent to "encourage and support" the "parent-child relationship" with the noncustodial parent. As a fundamental premise, this statement is not only inaccurate, it is potentially dangerous to battered women and their children.

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Both experience and empirical evidence have demonstrated that men who batter their wives are more likely to abuse their children. Research has also shown that children who have witnessed violence in the home may be frightened of the same problems of children who have actually been assaulted.

The decision to encourage a relationship with a violent parent is one that must be carefully considered, not assumed. Children who have been abused and/or who have witnessed violence in the home may be frightened of the batterer and in many cases at actual risk for their safety.

Although advocates of this bill have denied it, this clause sounds very much like the friendly parent rule. The friendly parent rule means that the willingness of the parent seeking custody, usually the mother, to facilitate access to the noncustodial parent, usually the father, is to be considered in awarding custody.

Any legislation that has as its fundamental premise the notion that a custodial parent must necessarily encourage a relationship with a noncustodial parent as a condition of awarding custody is both unfair and dangerous to battered women and their children. It ignores the research that warns of the potential harm that may come to women and their children if the relationship with the batterer is continued.

If the duty clause is included in this bill as it is currently written, women will be less likely to reveal that they have been battered in order to avoid the risk of losing custody of their children, because they may be seen as unco-operative and unwilling to fulfil their duty to encourage a relationship with the noncustodial parent. Any clause that is to be used as a fundamental premise for custody and access legislation must contain a provision for the consideration of violence as an indicator in the inability to parent.

We therefore suggest that this clause either be dropped from Bill 124 or that it be rewritten so that relationships with noncustodial parents be encouraged only when it is in the best interest of the child. Provision should then be made requiring that the best interest of the child include explicit considerations for the child's emotional wellbeing and physical safety. A history of spousal assault or child abuse must be considered a pertinent matter.

The next section that concerns us is clause 24(2)(c). This section states that when considering custody the court will consider the length of time a child has lived in a stable environment, the permanence and stability of the family unit it is proposed that the child live in and the ability of



the custodial parent to provide the necessities of life.

This is not new to family law legislation. We must, however, reiterate our concern that in making custody decisions, the issue of the safety of the children and their mothers must override all other considerations. A mother who takes her children with her to a shelter to escape violence must be seen as seeking security for them and not penalized for ensuring their safety. One of the necessities of life must be acknowledged to be safety and security from direct or indirect violence.

I would remind the committee that there has been a case very recently in which the very fact that a mother escaped to a shelter with her children was found to be an element of instability in terms of custody and she lost custody of her children as a result.

Subsection 24(3), which states that violence should be considered when assessing the ability to parent, is a welcome change to the Children's Law Reform Act. Unfortunately, we must question the credence this will be given in court.

It is currently difficult to have the effects of violence in marriage recognized in court, and consequently this subsection may be of limited use. Including the word "violence" in the legislation is not enough to guarantee mothers' and children's safety without educating judges on how it is to be interpreted.

Subsection 35a(2) lists four remedies for the wrongful denial of access to noncustodial parents. We have great concern with these remedies. Supervised access is the remedy of choice for many separated and divorced parents, but these facilities are largely unavailable across the province. The government of Ontario has been reluctant to fund such facilities. This remedy would be available only to some and not to others and could therefore be considered inequitable.

As one of the cities that has a supervised access facility at Merrymount Children's Centre, we can certainly testify to the value and to what we see as the absolute necessity of having these facilities available. However, even though they are available to us, they are not available to us in the way that we would like. In other words, there is often a waiting list. It is very difficult to get access now that this has become such a popular remedy in our jurisdiction.

The option of makeup time should be exercised only with consideration given to the child's preference and convenience. We would question the wisdom of forcing a child to visit with a noncustodial parent when it is against the child's wishes.

The reimbursement of expenses to the moving party for any reasonable expenses incurred as a result of the wrongful denial of access is especially punitive for single mothers. According to the National Anti-Poverty Organization, 48 per cent of single mothers live below the poverty line. I believe that is a low figure.

The problems associated with mediation are both numerous and complex. There is currently no accepted agreement on exactly what mediation is or who is qualified to do it. Virtually anyone can hang out a shingle and call himself or herself a mediator. The practice of mediation is unregulated and unstandardized. Mediators can practise without any training and are not

subject to any method of accountability.

Furthermore, there are no specifications in this amendment to indicate where mediation is appropriate in custody and access disputes, nor which methods of mediation will be used. Mediation is, in general, designed for parties with equal levels of power. The power imbalance is inherent in the relationship between a battered woman and her partner. This issue must be addressed in any consideration of mediation as a remedy.

We must insist that the above concerns be addressed before there is any further entrenchment of mediation in legislation as a remedy in custody and access disputes.

Subsection 35a(4): This section lists eight legitimate reasons for which access can be rightfully denied. The definitions here are cloudy and there is little indication of what constitutes reasonable grounds or acceptable evidence.

What evidence will be considered acceptable proof in the determination of impairment at the time of access? Will the legal definition of impairment be used? Will a breathalyser then be necessary? What definition will be used in defining harm?

The cloudiness of these definitions, in combination with the limitations on hearings to be imposed according to subsections 35a(7) and (9), opens up the possibility of an increase in litigation and the misuse of this section for the harassment and intimidation of battered women by their ex-partners.

Subsections 35a(7) and (9): If the time restriction and oral-evidence-only provisions are included in subsection 35a(4) in order to expedite the process, judges may be loath to grant leave for the filing of affidavits by the parties. This would be problematic, because the history of custody and access disputes in families where violence occurs is often long and complex.

The restriction of oral evidence only is completely unacceptable. If this restriction were to come into effect, battered women would be forced into a direct confrontation with their batterers. Many who have been physically and/or sexually assaulted by their partners during the marriage are traumatized and intimidated. As a result, they find it extremely difficult, if not impossible, to talk openly about what has happened to them and to their children.

Battered women are still at risk, even after divorce or separation. Within the last year, two women were killed in battered women's shelters by their ex-partners. Research done at the London Battered Women's Advocacy Clinic in 1985 indicated that of the divorced women who used the clinic, two thirds had been divorced between six and 10 years and were still being harassed by their ex-husbands.

We must ask if our already overburdened court system will be able to meet these new conditions by making the necessary judges and court reporters available on an equitable basis across the province. We must also stress that education and awareness, particularly in the area of family violence, are necessary components in the decision-making process of custody and access proceedings.

We then have nine recommendations, and I will just go through them by

number, if I may.

1. The duty clause should be dropped or rewritten so that the relationship with a noncustodial parent should only be encouraged when it is deemed to be in the best interests of the child, with explicit considerations for the child's physical and emotional wellbeing.

2. A child's physical safety and emotional wellbeing should be considered a necessity of life for determining custody in clause 24(2)(c).

3. Subsection 35a(4) should include provision for the child's preference and convenience in the legitimate denial of access.

4. The reimbursement of expenses for wrongful denial of access should be dropped from subsection 35a(2).

5. Publicly funded supervised access facilities should be made widely available across the province.

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6. Mediation should never be considered as a mandatory remedy in custody and access disputes where family violence occurs or has occurred. There is an inherent power imbalance in the relationship between a battered woman and her ex-husband.

7. The definitions contained in subsection 35a(4) should be clarified, in order to avoid the potential misuse of this section for the harassment and intimidation of battered women.

8. Subsections 35a(7) and (9) should be dropped. The enforcement of the restrictions to have a hearing within 10 days and to hear "oral evidence only" would effectively place a battered woman at a disadvantage in access disputes.

9. Education on family violence should be developed using demonstrated community expertise and should be mandatory for all professionals directly or indirectly involved with families where violence occurs.

Mr. Chairman: Thank you very much. I have three members who have indicated a wish to ask you questions. Richard Johnston first.

Mr. R. F. Johnston: Thank you, Ms. Boyd. It is nice to have you here again. For members who are new on this committee, this group has been lending advice to this committee since at least 1982, when we dealt with family violence at that time, and is always very helpful. I appreciate you being back again.

Reading your comments about the oral evidence problems and the problems of the woman facing the batterer, I was recalling that 1982 period when, I think, your group was quite ahead of its time around the whole laying-of-charges question: that women were unwilling to lay charges. I forget the percentage of times—the police in your jurisdiction started laying charges at that time.

Ms. Boyd: In 1981, yes. We did a study in 1979–1980 that indicated that the police were laying charges in only about three per cent of the cases, even though there were injuries requiring medical care in 20 per cent of those cases. We were the first jurisdiction to instruct officers to lay charges

where they had reasonable and probable grounds to do so. Since that time, we have maintained a charge rate in domestic calls of about 65 per cent to 70 per cent, depending on the particular year, which is an extraordinary record and has certainly made it much easier for abused women and children in our jurisdiction.

Mr. R. F. Johnston: I raise the point just in terms of what you are saying, and previous representations as well, around the inability of our judicial system at the moment to accept women's evidence and so the prejudices that are there in the system. I also think, before our next people come before us, we could talk about who the mediator is and standards for mediation, because I think you have put your finger on some very good points there about jumping into a supposed solution without really examining its implications.

I want to ask you one awkward question. Why do you think they are proceeding with this legislation? I have heard it attacked now from several sides here. Even those who want some kind of greater teeth in access enforcement do not seem to be happy with this thing and a large number of people are saying no. In fact, I just got this legal opinion that was given to the government last year telling them they should not proceed, using all the arguments we are hearing today. In your opinion, why is this proceeding? What is it a substitute for?

Ms. Boyd: I would feel awkward representing the committee on this. My personal opinion, and my opinion of the opinion of my agency—and we have put this forward to the Attorney General (Mr. Scott)—is that this is an effort to appease men's rights groups, who are infuriated by the fact that the support is being mandatorily enforced. I think it is a way of trying to show evenhandedness, trying to show that there is no favouritism.

This particular Attorney General has worked very hard and has clearly shown a strong concern for family violence. There have been a lot of changes under this government in terms of making the action of our society against family violence much more effective. Frankly, I feel that this whole action is an effort to appease those who see that action as being too vigorous and who see that as being far too one-sided.

Mr. R. F. Johnston: One final thing. It is small matter perhaps, but perhaps it is not. I am now more and more concerned that any rewriting of the Children's Law Reform Act has to really look much more seriously at what the role of children is in this whole matter.

We have done that in terms of laws around protection of children. We have done it around adoption. We have done it around long-term placements of kids in residential care. We have done it in terms of the Young Offenders Act. Yet here the child's views are of tertiary consequence in the way the thing is drafted. It strikes me that before we go anywhere with this, we should look at that. You did not make recommendations around that. I wonder if I could have some comments from you.

Ms. Boyd: I think we were remiss in not doing that, because the committee would certainly be in agreement that if children, particularly once they can speak, are not willing to go and visit with a parent, the kind of chaos that can result in the custodial home can be really great.

We are very concerned about the hidden factor of child abuse in cases where wife assault occurs. We know that, for example, in our case load of adult women, we have dealt with more than 1,700 women at the London Battered



Women's Advocacy Clinic, and 50 per cent to 60 per cent of those have been sexually abused, usually incestuously abused in their families of origin, where there was also violence against the mother in the family.

We feel that when a child is expressing a reluctance, and it is a clear reluctance, the assumption that the reluctance is being instilled in that child by the mother in the family is simply not true. Children are very reluctant; they may not be able yet to talk about what their own fears are. When we work with adult survivors of sexual abuse, we know that very often that whole part of their life is blocked out for many years as a safety mechanism, a coping mechanism. The child may not be able to articulate where that fear and that reluctance are coming from.

I think we have enough evidence to know that this is a very serious problem and we cannot afford to ignore it any longer. When children are reluctant to visit with the noncustodial parent, we have to listen to them, because very often they are telling us in the only way they can that they are frightened.

Mr. Carrothers: I appreciate very much your coming in. I wonder if I can ask you some questions around your comments on subsection 20(4a), because I am still trying to get a feeling of how you came to the comments you are making. I want also to deal with the recommendations you made.

Mr. Chairman: We are trying to fit in two other questioners as well.

Mr. Carrothers: I understand that, but we also just had a fairly long exchange, most of which had nothing to do with this bill.

I just wanted to ask, given that subsection 20(4a) only kicks in once custody has been decided, and given that, under the law, the interests of the child are taken into account when that custody and access and all of those issues are taken care of, so this is not as you are saying—I think I can agree with what you are saying about a law that says one of the issues you look at when you are deciding custody is whether they will deal with the parents—but this one only comes in after that.

Given, as I said, that the child's interests are taken care of, I wonder if the way this bill is structured does not meet your recommendations, because what we really seem to be saying in this clause—and maybe I am misunderstanding, and this is why I am asking this—is that once you have decided access is to be allowed and once you have set those terms and conditions, there is now a positive obligation listed out in the other lists of obligations that the parents have in this act. It is, among others, that there is a positive obligation to make that situation work.

That seems to me to be a very different statement from making this a fundamental decision or part of the custody or even from what is I think called the fair parent rule in the Divorce Act. That is a very different statement.

Ms. Boyd: The friendly parent rule.

Mr. Carrothers: Friendly parent. That is a very different statement in the Divorce Act from this one. I just wonder whether the recommendation that you are setting out is not met by the way this would really work. It only comes into play after custody has been set, so it is not something you are looking at when you decide custody.

Ms. Boyd: No, it may not be, although I have some question about that. It may not be supposed to be confused but it is often confused, and that is something to be aware of. We are already seeing a friendly parent kind of thing operating in interim custody cases and so on when it is not even there.

Mr. Carrothers: But are these under the Children's Law Reform Act—

Ms. Boyd: Yes.

Mr. Carrothers: —bearing in mind that many, many of the decisions are going to be under the Divorce Act?

Ms. Boyd: No, no. I am talking about interim custody.

Mr. Carrothers: Okay, under this one.

Ms. Boyd: I am talking about the initial, protective kinds of things that go on in family court, absolutely. We are seeing that happen. We are concerned about it because it means that if a mother has reason to be concerned about her child's reluctance to go and has what children's aid societies must call unfounded evidence—in other words, there is not enough evidence for the children's aid society to proceed and say that child abuse has occurred but there are indications: the child is reluctant and the mom is reluctant, and she, of course, is an expert on her ex-partner, most of the time—she can be seen as an unfriendly parent.

She may indeed be reluctant. She may be doing everything she can to try to have him supervised, to try to have conditions on his access, out of that position of protection for her child. Yet she is seen as a parent who is unfriendly, who is not prepared to facilitate access.

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I have dealt with a number of cases like this. Frankly, one of the amazing things is that—and I think you ought to know this—I work in the courts a lot and it is as though this bill is already in effect in many cases. People are acting as though this is already the law in the way they are dealing with cases now. It has a very detrimental effect when for obvious reasons—we all know how difficult it is to prove allegations—those are not proved. It makes the mother seem mischievous.

There is this huge body of newspaper evidence that suggests that where that accusation is made, it is necessarily vengeful and mischievous, simply because it has not been able to be proved. Of course, we know that when children are too young, police are reluctant to put it before the courts because it is very difficult for the children. It is also difficult for the court to believe in the credibility of child witnesses under a certain age.

That does not mean it is not happening and it does not mean that we will not have to deal with the fallout 25 years down the line when that person as an adult has to try to deal with the lasting trauma.

Mr. Carrothers: I wonder if it would not be better to strengthen section 24 to keep those issues out of custody and access decisions. Maybe that is the solution here.

Ms. Boyd: It may be, but it does need to be explicit that it is included in that, that where there are allegations of abuse that is not

considered to be de facto the act of an unfriendly parent.

Mrs. O'Neill: I want to congratulate you on your efforts in the city of London. I think they are an example of the co-ordination that goes on there. No doubt you and those who are associated with you have made an awful lot of effort to get to that point.

I am interested in and I am certainly doing an awful lot of listening in these presentations about the rights of the child here. You suggest "child's preference and convenience" as a legitimate ground for denial of access. Because I am, as I have suggested, so inexperienced in these things, and luckily so, I wonder how the child would express that preference, how that would be determined: Who would do the determination? What age would the child be? How often would that be reviewed? I guess I would like some logistics on how you would implement this.

Ms. Boyd: Sure, and how you would be sure that the custodial parent was not abusing the whole issue. I realize that is the sensitive issue.

Let me give you two examples just from the case load I have had in the recent past: A nine-year-old who, every time it is dad's custodial time, gets sick. There is no question that this kid is sick. This kid is throwing up, in pain. The doctor does not know what is causing it but it only happens on access weekends.

What is mom supposed to do? Dad is sure that mom has something to do with this, that mom is fomenting this reaction. Mom is beside herself. She is really concerned, more so than she has ever been before, that something must have happened to make this child so upset at the thought of access.

Mrs. O'Neill: The criterion then would be in that case a medical report.

Ms. Boyd: Exactly, and an assessment where that is happening. Once they get above 12, if they do not want to go, they will do almost anything they can, particularly when they have their own friends they want to be with. I have had clients whose kids have run away. Of course, that has rebounded very directly against the custodial parent. She is not taking good enough care, whereas the children are running away so they will not have to go with dad, that kind of thing.

It is a very difficult thing. I think assessments are essential where that reluctance is consistent, so I do think that is necessary. But it needs to be done by people who are clear about really listening to the child and who are open to any nuances the child may give about what may have been happening to them. We know that if children have been abused, they are very often reluctant to be open and clear about that, so we do need experienced people able to make that judgement.

Then it needs to be part of a decision-making process, and the children ought to be part of that decision-making process as well. Many of the mothers I see say that if there were some mechanism whereby the court would explain to the child why the judgement is made so that the child were actually made to feel part of the process, it would be easier on them to encourage their children to follow the access orders.

Children attach the thing to mom: "Mom is making me go and see Dad. Mom is making me have a relationship with this person who means nothing in my

life." Moms do not need that extra responsibility, especially since many of them really are pretty ambivalent about whether or not they want their children to do that.

I think we need a couple of things in place there: One is encouragement for kids where there is not a serious problem, just a reluctance; the other is a very clear assessment of where the problem is a deep one.

Mrs. O'Neill: Some judges do involve children.

Ms. Boyd: Some do.

Mr. Chairman: Mrs. O'Neill, our time is up. However, Dianne, you were still on the list, and since this delegation is from London, I will be lenient and give you a couple of minutes.

Mrs. Cunningham: Hello, Marion. Do you know how lucky we are to have a person like Marion coming before the committee?

Mr. Chairman: I know.

Mrs. Cunningham: We look at her as a tremendous expert in London and somebody who has given a great deal of her life to this project. I know we will be taking her remarks very seriously.

We have a political dilemma here.

Ms. Boyd: Sure you do.

Mrs. Cunningham: I was so glad to hear you say that supervised access facilities are lacking. I do not think we would even have this bill if we had more of them. Do you agree with that?

Ms. Boyd: I would certainly agree with that. I think they are the answer for these disputes because even if they operate only over a certain length of time so that the situation gets settled down and an expert is there watching what is going on, sometimes that can be enough to resolve the fears around the issue.

Mrs. Cunningham: One question. We have a lot of people who have been witnessing these hearings who really think this bill is going to be of great assistance to them. I will be specific; moms and dads who are not the custodial parents and grandparents. They are really hanging their hats on this bill and coming to all of us and saying, "Boy, we really need it," which is the other side of the argument. There is some sympathy for people who have been wrongfully denied.

In your opinion, is it going to help them or is it going to make it more costly or difficult? It is supposed to be less time consuming for them because of the time frames and what not.

Ms. Boyd: I do not think so. I think it is going to be more costly and more time consuming. You are quite right. I think there is a need. I think children have a need where that is appropriate to have a relationship with the other members of families where a family has broken up.

Our concern would be that this be done in a way that is going to be protective of the child—and that is not always so—and that is not going to



increase the danger to a mom where abuse has happened. Abuse often happens from grandparents, as well as the father. I do not think we need to be too sentimental sometimes about that. Abusive relationships often carry through from the generation before.

That is not to say that all these cases are abusive cases, but we do have to remember these disputes only happen in a small percentage of the cases. Why are there disputes? I think we need to be very clear that where there are disputes, there are reasons for those disputes. Other people who do not like each other and have decided they will not live together any more, who may have had other partners during a marriage and there is a lot of anger around that, do not have these kinds of problems. Where there are custody and access problems, we need to really listen carefully to the fact that there must be some underlying reason for the anger and fear that is being expressed.

Mr. Chairman: Thank you very much. You have certainly added a great deal to the information and advice that this committee has received.

Before you leave your chair, one thing has been drawn to my attention in your recommendations. I am wondering if you could clarify a point which may just be a typographical error. In recommendation 2, you make reference to clause 24(2)(c). In looking at it, some members of the committee felt you might have meant clause 24(2)(e).

Ms. Boyd: It should indeed be clause 24(2)(e).

Mr. Chairman: We will correct that in the record then.

Ms. Boyd: Thank you very much.

Mr. Chairman: Thank you for coming before us and taking the time to share the experience of your centre.

Mr. R. F. Johnston: It proves the members are awake and alert.

Mr. Chairman: After so many hours of hearings, we are still alert.

The next organization to make a presentation to us is the Ontario Association for Family Mediation. Representing this organization is Frank Corner, the president.

Mr. Corner, welcome to the committee. You have one half hour to make your presentation. You may leave some of that time for questions from the members of the committee. We caution you against commenting on specific matters which may be before the courts.

Mr. Corner: Yes, of course. I feel like a qualified jungle fighter and garbage disposal expert.

Mr. Chairman: We have certainly heard a lot about mediation, so we are interested in what you have to say.

1530

#### ONTARIO ASSOCIATION FOR FAMILY MEDIATION

Mr. Corner: I happen to be a family law lawyer. I have been in practice for 33 years and have seen almost every type of situation that could

arise, including the cases that were mentioned by the preceding speaker. I have also been specializing in family law for more than 10 years and I am a mediator as well. In my office we have a holistic approach. We have a social worker/therapist who also comes in and helps us out on cases.

I am the president of the Ontario Association for Family Mediation and I heard some questions about qualifications. I am quite prepared to answer questions as to what we are doing in that regard right now. It is ironic that one of the last occasions I was in here was when I was on a committee investigating amateur boxing. One of the key things that we found there was the role that a referee played in providing some safety factor. It is ironic because that is one of the parallels we draw with a mediator involved in these cases. The mediator is able to balance up the power between people. I hear many speakers like the one ahead of me state that there has to be a power balance before it is effective mediation, but of course the role of a good mediator is to balance up that power. I will leave that point as it is.

The approach I am taking here today is, I hope, rather practical and pragmatic. I realize the task you people have in attempting to come up with something that is workable. You could spend hours and hours debating the philosophical approach and the problems of children and families. We always have hidden agendas; we will always have the emotional turmoil. There is absolutely no way you can legislate that away or order it away in court. The hidden agendas are what always cause the problems in all our court actions.

I have tried to set out in the outline I have given you the fact that, as the preceding speaker said, there are very few cases in which you are faced with assault and all these dastardly, hideous and horrible things that happen. Most parents can submerge their personal feelings for one another to act as proper parents for their children. They do care for their children. Even in cases where you see many horrible things happening, people actually do care for their children. The problem is that they cannot submerge their own feelings for one another.

As I have said in here, the trouble areas with regard to exercising access generally arise from: (a) concerns expressed by the custodial parent over what effect access has on the child: the child is coming home upset, has divided loyalties, insecurities, fears; (b) parents using children as weapons in personal vendettas: they bad-mouth the other spouse before or after access, insist on the children making choices between the parents, manipulate children through gifts, privileges, or lack of discipline, attempt to inflict pain on the other spouse; (c) abuse of the child by the access parent or perceived by the access parent on the part of the custodial parent.

I want you to keep in mind that I act for both sides in these cases. I have acted for men and women almost equally, and I do not see complaints just on one side. I see complaints from both sides. Unfortunately, a lot of the groups that come before you may be interest-oriented. I am not interest-oriented; I am not personally and I am not on behalf of my organization.

Our organization, if it is interest-oriented, is perhaps oriented towards the protection of children. In drafting our rules of ethics, our disciplinary codes and our standards, our primary thrust is towards the protection of children. That is why for the past 10 years I have been practising mediation, as well as litigating where mediation does not work. Obviously, I cannot do both for the same clients.

Another area that causes these problems is children's attempts to manipulate the parent and the situation. We have heard talk about abuse. We have heard talk about how a child will not want to go with a parent. I see both sides of this. I have acted for wives who have had themselves in court year after year—long after they have left me because I cannot handle them—for contempt of court. It has nothing to do with whether or not there is abuse. It has nothing to do with whether or not there is a good relationship between the child and the noncustodial parent. It is an ongoing battle by the custodial parent.

Then I have seen the other side where the access parent is just as bad.

We have to remember that children do not always come up with a valid choice as to where they are going, because they have a fear. What happens is that they have a loyalty to one parent or the other. If they are with the custodial parent, they have to live with that parent day in and day out. It does not take a large brain to realize that a child is not going to upset the custodial parent—he loves both parents but he is not going to upset the custodial parent—by expressing a choice for the other one in the face of antagonism and very bad feelings on the part of the mother or father who has that child. That is just human nature.

Legislation, to be effective, as far as I am concerned, must direct itself to the causes of the access problems, not to the correction of the symptoms. I am hoping this committee will be able to go at how we can effectively promote better behaviour. You people cannot recommend options, solutions, that are going to educate people to be good parents. There are courses around for effective parenting, but that is not, I would suggest, part of this committee's mandate. What you are trying to do, as I see it, is to do something within the legislation that will be effective.

I am suggesting section 35a be looked at to reduce the imposition of court-mandated behaviour, which will never really work—as I have said before, you cannot legislate away insanity or bad feelings—and increase the effectiveness of any court-imposed process by making part of the process certain steps that must be taken prior to any hearing.

As a practising barrister out in that arena, I realize there are many things judges can do that are not in the legislation. There are many ways in which judges can subtly influence the litigants to do reasonable things. All I am suggesting here is, why do we not make it part of the process and do it by way of regulation? If you cannot do it in the act itself, do it by regulation, suggesting that certain steps be taken, as I have set out here:

Completion by both parents of a current parenting plan in accordance with an outline provided by the government: You people have all sorts of assistance. There are all sorts of specialists around—child psychologists, child psychiatrists, all sorts of mental health workers—who can tell you what has to be done to show the elements of parenting. You have nothing in there right now. You have what you should look to for the best interests of the children. Parenting is only one little portion of it.

I am suggesting that as part of the regulations, as part of what a judge can require before he even hears the case, both parents are obliged to sit down with someone else and work out a parenting plan.



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While I have suggested mandatory mediation, I want you to know that my organization and I personally, generally do not seek mandatory mediation. Mandatory mediation very seldom works because people have to feel they are part of the process. They have to want to make the process work, and as soon as you make it mandatory you find people getting their backs up.

If you make it mandatory plus open mediation, which means it is not confidential, now you find a situation where it is just the same as being in court. People are going to take postures, they are going to take positions. Because they know it is going to be reported, they are obviously going to say the worst thing about their partner and the best thing about themselves. That is the problem with open mediation and that is why I do not think I have ever used it. For that reason I do not ever want to use it, because it does not work in the dynamics of the situation.

Down in California they have had mandatory mediation, which unfortunately a lot of people seem to think is mandatory total mediation. What it is is a mandatory first attendance before a mediator in order that the process can be explained. From my experience, I am suggesting that we have not only that first introductory meeting, but separate meetings with both parents to determine whether or not it is a feasible situation, in order to find out whether there is an imbalance of power, in order to find out whether they are proper candidates for mediation, in order to protect the interests of the children. I feel that is about the only situation where you would want mandatory mediation, and certainly not at any level other than this one particular situation where we are trying to enforce access. That is the only time I or my association would ever go along with it.

Court-ordered assessment: Normally, that is an option for the trial judge to order. It does not seem to be in this particular section. It seems that is another option the parties can take if mediation is not suitable. Therefore, you have someone who can go in, take a look at the situation and find out whether or not it is proper. In child abuse cases, you have the children's aid society. In many cases, you have the official guardian's representative who can act on behalf of the child. There is a special section under the Courts of Justice Act that allows the judge to order an investigation through the official guardian's office.

Moving down to subsections 35a(7), (8) and (9), my comments are that to expect these matters to be satisfactorily disposed of simply by forcing early entry into court is to ignore our courts' capacities, the immediate legal costs to the litigants, the dynamics of forcing compliance in the face of emotional animosity and the actual mechanics of obtaining legal funding, instructions and evidence. From a practising barrister's point of view, I just cannot see how this is going to work—the time limit you have put on here, the speed.

At one time the Attorney General sent me a letter—it was back in 1988—suggesting that this whole process was going to provide an inexpensive and speedy means by which access orders can be enforced, but this is perhaps too speedy. Legal aid is normally involved in these types of cases. It is very difficult to get legal aid that fast, because they have to be investigated financially. It is difficult to get it into court that fast. We have a case load now in all of our courts that is enormous.

On the question of having oral evidence, I heard the previous speaker



talk about the dynamics of having someone come in and face the other party. It is very real, having to come in and face in person, a person you are afraid of or where there is a power imbalance, but then again the facts of life are that judges on these cases get affidavits that are black and white. It is just amazing. You can get 16-page affidavits and you would swear they were from two different planets. They have exactly black and exactly white and the worst that you can possibly get on either side. It is unbelievable.

In order to do these types of affidavits, you almost have to have a course in creative writing. It is so unbelievable that when a judge sees these affidavits, there is absolutely no way he can make a decision. So what does he do? He orders an assessment or he orders viva voce evidence. They have a motion in which people have to be there so that they can see what they are like and they can be cross-examined. You can cross-examine now on affidavits; it is not the same. I would say that we should be trying to discourage the use of our courts until such time as the alternatives have been considered.

I cannot help but stress that it is possible for you, as legislators, to help the judges by putting something into the process itself so that it does not get to them until something effective has been done to help these people, the litigants, take part in the process itself and to help the litigants do something they cannot avoid, something that will help the courts later on if it is forced into court.

I would be quite pleased to answer any questions you have. I deal in interdisciplinary types of approaches and I am on many committees. I think I can pretty well answer anything you would like to ask me.

**Mr. Chairman:** I will start off this time. Previous presenters have mentioned the problem of power imbalance and people being in the same room facing each other in a mediation situation. Have you had experience with shuttle mediation, keeping people in separate rooms? Can that power imbalance be addressed by having advocates present with, say, the woman in the case or are there other ways the power imbalance can be addressed?

**Mr. Corner:** There are many types of situations, as you can appreciate. Sometimes you cannot see two people together. Sometimes it is impossible because there is this animosity. Sometimes you have to call it in caucus. You have to separate them. You have to use humour. You have to use all sorts of techniques in order to break down this impasse you have.

I have seen all sorts. I have seen them come past my office from my partner's office, just muttering and cursing and throwing things, and you get them back on track. That is all part of the techniques.

I appreciate the concern of the previous speaker who says that anybody can mediate. That is one of the things that disturbs me intensely and why our organization is now doing accreditation and why we have standards and ethics. We have certain minimal types of qualifications people should have in order to be able to do this. You cannot do any more than that. I see people who feel that because they are social workers or psychologists, whatever it is, they can mediate, but they are not really mediating. Heaven forbid I should say this, but judges sometimes feel they know how to mediate just because they are judges, and they do not.

You get all sorts of situations and all sorts of methods in order to deal with those situations where you have an imbalance. That is what a proper mediator should be doing, balancing up the situation between the two of them.

I cannot explain to you all the techniques, but there are numerous techniques of allowing the person who is the lower party, the subservient party, to have more power.

It is not always the wife. I was down in Hawaii one time and they put on a demonstration for us. They had a man and a woman. The man came in with his briefcase and everything all typed up. He looked like he was in charge. The wife just sat there and whenever he said anything, she just looked at him. This fellow was so frustrated, it was humorous to watch. A lot of people did not realize who was in charge. It was the woman who was in charge, not the man. Just because he was prepared—one way of equalizing power is to have the ones who are not prepared be prepared, to help them learn how to take charge of their own lives.

Sorry, that was a pretty long and involved answer.

1550

Mr. Chairman: I have been wanting to ask that question.

Ms. Poole: Heaven forbid we should have a frustrated chairman. I am glad you got that out of your system.

I would like to thank you very much, Mr. Corner, for coming today, because I found your presentation both quite balanced and refreshing, with your commonsense approach. That being said, you can appreciate that over the last week we have heard two very differing sides about mediation, with some very positive and some very negative comments. With that in mind, would you like to tell me how many members you have in the Ontario Association for Family Mediation and what exactly are the qualifications, education and training necessary to be a member of your association?

Mr. Corner: It is around 400 and it is spread all around the province. There are more coming in all the time. They are from many, many professional backgrounds. We have psychiatrists, psychologists, social workers, lawyers and mental health nurses. We have them from a broad spectrum.

The qualifications required to join, to be an associate member are not onerous, but over the last year, what we have been doing is issuing certificates for practising members, which requires a 40-hour course in mediation. Along with this, it requires in some cases either a degree from some other course before that, or the grandfathering clauses if they have been out in the community and can show they have been working and have certain qualifications in the areas we want them to be qualified in, which may be family dynamics, child behaviour, interviewing techniques. There is a great, broad spectrum of requirements that we feel mediators should have.

I personally feel from my experience with people in Hawaii over the last 10 or 15 years that volunteer mediators can be trained. There are two top family law mediators down there. One is a fireman and the other is a former nurse.

They have a training course down there. What they do is that they go for people who are empathetic who can deal with people and can learn these skills. It is not magic to have a degree in something. Sometimes having a degree is a handicap, because you cannot take off that previous hat and put on the new

hat. You tend to try to do therapy. You tend to try to give legal advice. Do you follow me?

Ms. Poole: Right. Just one supplementary to that: To be a practising member, which I think really is getting to the nuts and bolts of mediation, a practising member has to have a 40-hour course. What proportion of that course would be to train your members in handling sensitive cases of domestic abuse and violence, or is it covered in the course at all?

Mr. Corner: Oh, it is covered in the course, but the percentage of it, out of 40 hours, I do not have that at my fingertips. There is a course—you probably have had a presentation or will have one from Barbara Landau, who is working with the Attorney General's mediation committee. It is at the instigation of the Attorney General, as a matter of fact, that we are going into this so strongly.

We have been working on this for the last five years, but lately—Thursday night, I will be on an accreditation committee meeting. One of the other criteria we have is that these people have to put in five completed memorandums of understanding that show they are dealing with the proper items with these people.

Ms. Poole: Thank you. I am glad that is an important part of your course.

Mr. Corner: Highly important.

Mr. R. F. Johnston: I would love to have had more time with you because there is so much to talk about. I have been involved with Barbara Landau for years and I have actually used that line as a mediator myself.

I have some real problems with horses and carts at the moment in terms of legislation. Although you have an organization and you are trying to develop standards, you do not have legal status at the moment as I understand it?

Mr. Corner: Nor do social workers.

Mr. R. F. Johnston: That is a good point in terms of their role before the court. I have concern about the lack of standards. There are many schools of social work at universities, and standards that are questionable but there. I am wondering how many people are working outside your group of 400 at the moment, with not even this full 40 hours of training.

Mr. Corner: I could not really tell you, but I know I have run into horror stories that make me very angry, and I suppose my anger is shared by most of the members of my organization. We are very conscious of the fact that people are going to be hurt by going to people who are not qualified.

I was giving a talk for a judge up in Guelph one night and one of the co-speakers on the panel had been involved in mediation; that is why she was there. This woman had been with one so-called mediator once a month for a year, and then with another one for nine months, once a month. They never did go at the root causes; they did not get at what their goals were, the people on it; they did not have full disclosure. It was a horror story.

Those are the things that make us want to do more about it. We are very



conscious of that. I know there are people out there practising I would not go near with a 10-foot pole.

Mr. R. F. Johnston: I agree. I have concerns about us legislating too much until that gets cleared up a bit more. Can I have one more question?

Mr. Chairman: One more.

Mr. R. F. Johnston: I am not sure I understand exactly what you are talking about on section 35a. Let me put it this way: The argument by the government for the process it has brought in of going to the quick, 10-day court solution is that these are people who already have access agreements written down, and there is a small, fairly simple problem to overcome which can be identified in that list of wrongful denial of access at the beginning of it and that it can be solved during that court process.

When you say we should then be coming into a parenting plan established at that point, it seems to me to be a bit philosophically at odds with what—

Mr. Corner: Are you talking about clause 35a(10)b?

Mr. R. F. Johnston: Sorry. Yes, I am.

Mr. Corner: The scope of evidence at the hearing is limited?

Mr. R. F. Johnston: The way it has been posited to us—and I am sure the parliamentary assistant will correct me if I say this incorrectly—is that the reason you can do it quickly in 10 days and only with oral evidence is that the matter there should be fairly straightforward to deal with. They are not reopening the custody question again, or large questions; it is a small matter. Therefore, I am wondering if that is at odds with your notion of getting down to parenting accords being written by these people before they get into that process.

Mr. Corner: Could I just interrupt you? I do not know whether I am Alice in Wonderland here, but if you take a look at that clause 35a(10)b—"the responding party's reasons for the denial or failure"—you are not talking about a simple matter; you are opening up the whole thing again. If you want to discuss with these people, or you want them to leave and have any sense of this thing succeeding, it is not a simple matter. It is just like reopening it. You are just not having an appeal situation. You are reopening it. That is the problem with this. As soon as you put that clause in there, then it is wide open.

Mr. Daigeler: First, I want to thank you for the fact that your brief is brief and at the same time very concise and, I think, bringing in some new ideas. I appreciate that in particular.

When you ask that the government should be more involved perhaps in trying to adjust individuals' behaviour, and you are proposing in particular some parenting plans to be developed by the government, I must say I have some philosophical difficulties with that. In my previous incarnation I used to work for a church; I did part of that work. I have some very serious questions about whether government should move in that direction or even get further into that direction. In the whole discussion we are having, one must ask oneself to what extent should we really as a state be involved in this. I



think we have to be; it is really that we have got to be involved. But that is more a comment than a question.

My real question is, at the end of your brief, you are saying we should try for some alternate dispute resolutions. Again, I agree with you on the principle, but with regard to the specific question of getting access in cases where access has been awarded, what kind of alternate dispute resolution would you recommend?

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Mr. Corner: I have already outlined that. I have talked about mediation or getting into an assessment.

Mr. Daigeler: Before the actual divorce, but in cases—

Mr. Corner: No, you do not have this now in this setup. You had it previously when you talk about taking it into court for custody and access. You have those remedies. But as I see it, you do not have it now when you are going back into court to enforce access. It is not always ordered and you do not always have an assessment. If there has not been an assessment and there has been custody ordered originally for whatever reason, and it is faulty—something is happening—you should still have that right to have an assessment by some professional input.

Mr. Daigeler: Forced? If I read the bill correctly, this is already provided as a possibility.

Mr. Corner: I am only relating to section 35a; I am not relating to the other parts of the Children's Law Reform Act.

Mr. Daigeler: Clause 35a(6)(c) says, "appoint a mediator in accordance with." Does that not respond to the concern you are having?

Mr. Corner: One of the problems with the way it is set up now is that it is really not mandatory mediation; it takes both sides.

Mr. Chairman: Thank you very much for your presentation. The committee is delighted that, having heard so much about mediation on both sides in the earlier days, we had someone who is qualified in the area coming before us to make a presentation.

Mr. Corner: I hope I helped somewhat.

Mr. R. F. Johnston: On a point of order, Mr. Chairman: Before you leave, I gather you think Barbara Landau is coming before us. Would it be possible that any of the things you have worked on in terms of standards and those kinds of things would be available for public perusal?

Mr. Corner: Yes. If you would like to see those—

Mr. R. F. Johnston: Could you send them along? Those would be useful for the members to know.

Mr. Corner: Absolutely.

Mr. Chairman: We could get our researcher, Susan Swift, to be in

touch with you regarding any additional information on your association or your accreditation process.

Mr. Corner: Fine. You have Barbara Chisholm coming from our organization on Thursday, in some independent capacity, I think.

Mr. R. F. Johnston: She has standing with our committee.

Mr. Corner: She will overwhelm you. She has some very good thoughts.

Mr. Chairman: I have heard from her before.

The next organization to appear before us is the Access for Parents and Children in Ontario organization. Representing that group is Rachele Dabrais. I hope I have pronounced your last name right.

Ms. Dabrais: Yes, that is correct.

Mr. Chairman: Welcome to the committee. You have one half-hour. You may leave some time for questions, if you wish, during that half-hour. We would caution you against making reference to specific cases which may be before the courts.

#### ACCESS FOR PARENTS AND CHILDREN IN ONTARIO

Ms. Dabrais: Thank you for giving me the opportunity to speak to you today regarding the very difficult and important issues outlined in Bill 124. By way of introduction, as the chairman said, I am the director of the supervised access program in Etobicoke, better known as LAMP. Just to explain, it is not called LAMP, it is called Access for Parents and Children in Ontario, but because it takes place in a building which houses the Lakeshore Area Multi-Service Project, it is called LAMP.

I have been the director of that program for a year. Prior to that, I conducted custody and access as well as child welfare assessments at the family court clinic for the family courts in Toronto.

I believe that Bill 124 addresses a very important problem. I fundamentally agree with its objective; namely, to assist both custodial and noncustodial parents in complying with court-ordered access arrangements, of course, when these arrangements are in the best interests of the child. I think the bill rightfully recognizes that it is important for a child to have a relationship with both parents.

Despite my support for the intent behind the bill, I disagree fundamentally with the way in which it proposes to implement or operationalize its objective. My view is that this bill attempts to deal with a very human problem in a legal way. The bill suggests that swift court action following a breach of access become the primary means of dealing with the problem at hand. However, when one has two individuals who are already entrenched in a lot of bitterness, hostility and anger over a separation, I believe the least desirable course of action would be to have them return to an adversarial process.

Moreover, although Bill 124 makes mention of supervised access, and I wish to say I am very happy to see that as a possible means of resolving particular disputes, the provincial government has not to this day provided any formal effective mechanism through which supervised access can be

implemented? We do not simply need legislation that talks about a right to access; we need ways of implementing that.

I am now going to quickly go over my concerns regarding the proposed amendments and then focus on the access program and tell you a little bit more about that. Although the phrase "in the best interests of the child" has been thrown around here for a couple of days, and you can see it in the act, I am concerned that in fact children may be treated as objects. What I mean by that is that, for instance, in subsection 35a(4) there is absolutely no mention of the child's wishes or the child's point of view regarding a particular access situation. The bill, as I see it, tends to focus on what is fair for either parent, not what is fair for the child, and I wish to highlight that often what is fair for either parent may not be in the best interests of the child.

I want to talk about a quick example to exemplify my point. There is a case that I am presently involved in where a father who is the noncustodial parent has access to his son every Sunday for three hours. One particular Sunday last month the mother called me and said: "My child does not want to go for the access visit. What do I do?" Apparently this child wanted to attend some Easter ceremony at the local church that was very important to him. He is six years old and religion is now beginning to be important in his life. The mother wanted to respect the child's wishes, but at the same time did not want to go against this court order and did not want to anger her husband who had been physically and emotionally abusive during the marriage, so she was afraid.

What I did was call the father and explain the situation; in other words, I tried to negotiate the situation. The result was that the father agreed to see the child for half an hour and then allow him to go to his religious ceremony. I want to highlight the fact that this father, had he had a legal recourse, would have gone to the court immediately, simply because he wants to get back at his wife. They are still entrenched in this bitterness and hostility. These two parents have recently come through a very long and difficult separation, and I think to have put them back into that court process would have meant to rekindle the conflict, and certainly that would not have been in the best interests of this particular child or any child.

Second, and following from the above, I definitely believe that there would be an increase in litigation if the amendments in Bill 124 were implemented. The bill encourages the use of the court in settling access disputes rather than promoting means of negotiation. Apart from the expenses that this would incur, I really do not believe it is in the best interests of any child to have his or her parents fighting in the courts. This causes feelings of guilt, anger and sadness in the children and will serve only to ultimately alienate them from their parents.

I believe that, rather than negotiating, the court would have the effect of further polarizing the parents into their respective positions. In addition, if parents are able to use the courts as an immediate recourse, I believe that there would be a reduction in their willingness and their ability to negotiate subsequent matters that will inevitably arise around access situations, so that it will serve as a role model: when something goes wrong, we run to court.

Third, I am concerned that returning to court over a missed access visit would be a Band-Aid solution to a problem which is most likely much larger and much more complicated. In the cases we are talking about there is already an existing order for access. The fact that either parent may not be complying with that access order is reflective of a larger, more pervasive problem. To

simply order a compensatory visit will not take away that large a problem, and what will happen is subsequent missed visits. I wish to highlight that simply ordering compliance is not going to ensure that you will get compliance.

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Fourth, I am concerned for several reasons regarding the admission of oral evidence only during a court proceeding. I believe this will have the effect of inflaming a particular situation. For instance, there are women who have been in abusive relationships. Forcing these women to make a presentation or a statement in front of a court with the husband present in the court proceeding means placing these women in a very dangerous, subservient position which is similar to what they have experienced in their marriage. Some individuals have a real fear of retaliation from the other partner or are simply very intimidated by the whole process and would not be able to handle their anxiety well on the stand.

I also believe that accepting only oral evidence and evidence that is directed only to the particular denial of access, suggests that the problem can be addressed in a vacuum without looking at its larger current and past context. I believe this is not only an erroneous but a dangerous assumption. The cases of which we are speaking have a long-standing history that must be taken into account when one is trying to make decisions with regard to the best interests of children.

Moreover, I feel this would place the court in a very unfair position. As I have stated several times already, we are talking about individuals who are bitter towards each other, who are angry and who are opposed. I do not know if any of you have had experience working with these couples, but as the preceding speaker stated, it is like they have lived two totally different lives and they were never together. So when they give an account of a particular situation, one says A, the other says B; one says black, the other says white. Both accounts of the particular occurrence seem reasonable. I think it is really unfair for the judge to have to be put into that situation of trying to decipher what happened just based on what is presented before him, and certainly not only unfair to the judge, but unfair ultimately to the child who has to live with that decision.

Fifth, I wish to comment on the provision that an application can be brought to court within 10 days so as to ensure an expeditious hearing and determination of the dispute. First, we are all aware that there is a backlog in the courts as things stand now. I sincerely fail to comprehend how these disputes can be heard in court so quickly. Second, I believe there is little merit in bringing together into court to try to resolve a particular issue two separated parents who have a history of conflict and who have just experienced conflict a little while ago. I really do not think it will work. I think there is merit in giving them a cooling-off period.

Also, I think 10 days does not give sufficient time, for example, to appoint an official guardian, to bring together evidence, or for someone to get counsel.

Finally, the bill makes mention of supervised access but it does not specify at all who is to supervise the visits, who is responsible for choosing the supervisor, who will pay the costs, or the duration of time over which the supervision is to occur. In many cases, relatives and family members do not wish to become involved in the supervision of access visits, and I believe that in many cases it is very inappropriate for them to become involved,



because they can be very biased. I believe putting this provision in without making specifications of how the supervised access is to be implemented is very dangerous. Of course, it is useless, and I will be speaking to that in a while, to make this provision unless the government is prepared to put in the structures that will allow court orders to be implemented effectively.

Let me just go back a minute. Sometimes during the course of the program I cannot take cases because our financial resources are very scarce. We do not have sufficient staff and we also have an overflow of cases. One particular case I had to turn away because of those reasons. Therefore, the terms of the supervision of access were left up to the discretion of the custodial parent.

This particular case involved a custodial mother with three children. The reason that access was to be supervised was that the father had a psychotic illness. Because there was no other facility in the city, the mother chose a friend from her religious community, and the father agreed. I have recently been informed that now access has been completely terminated because it has been alleged that the father sexually abused two of the children during the access visits.

Let me focus now on supervised access programs, as I say in my brief, as an alternative to resolving access disputes. Before I do that, I would like to just give you a little bit of background on this particular program, Access for Parents and Children in Ontario. Basically, we provide a service that enables children to have access visits with their noncustodial parents in a safe and neutral setting. This is the only such program in Metropolitan Toronto, and we have been operating since 1981. If you wish more information on the program, you will find it in appendix 1.

The number of cases that we serve grows yearly. Since 1983 we have supervised over 6,500 visits between children and their noncustodial parents. On the average, we serve approximately 47 families per month, and approximately 90 per cent to 95 per cent of our cases come directly from the courts of Ontario.

Besides providing a safe and neutral place for the child to have access to his or her parent, we fulfil a number of other functions. For example, where there is a question regarding the necessity for supervised access, we can help to evaluate the appropriateness of such access on the basis of observations of the visits. Second, the program provides an interim arrangement which allows access visits to occur while the parties are adjusting to the separation and attempting to find alternative types of arrangements.

Program staff act as witnesses. I have often acted as an expert witness in court on these matters and I provide verbal and/or written reports to the referral sources, mainly lawyers, regarding the visits. Ultimately, these reports help the courts and the parties make decisions as to the appropriateness of ongoing supervised and/or unsupervised access.

We assist in negotiating aspects of access situations, thus avoiding the necessity for litigation. We work very closely with the office of the official guardian. I spend approximately one third of my time each week working with the office of the official guardian.

We try to protect children from angry confrontations which may occur between the parents at the time of the actual exchange. We do this, for example, by trying to avoid having the parents meet during the exchange or

sometimes simply by taking the child to another room and providing some comfort for the child if the parents begin to engage in a verbal altercation.

We try to teach the parents the importance of taking the child's needs and best interests into primary consideration, as well as the importance of avoiding negatively influencing the child against the other parent.

Finally, we facilitate positive parent-child interaction during the visits. We assist in parenting skills and we provide positive role models for parents.

As stated already, one of the major functions that the program fulfils is that of negotiating situations that may arise around access. I would like to delineate more specifically how that is done. Of course, I am going to be talking mainly from a clinical or social work point of view, because I believe that is the way these disputes are best resolved. What I do is develop a relationship with the child and each parent.

I provide feedback to the custodial parent regarding the visits. If they have any anxieties about the visits, they can ask me questions about them and I will give feedback. I provide a link between the parents so that they can compromise. They can communicate through me so that they do not have to face one another and have confrontations.

I also am a trusting and neutral person for the child. Oftentimes in these situations children are in a loyalty bind. They are fearful perhaps of telling the custodial parent that they have enjoyed a visit or that they have concerns about a visit, because they are fearful of the reaction from that parent or they are afraid that the custodial parent may be disapproving or disappointed that he actually enjoyed the visit. I am there for a child to express his or her sentiments to.

Throughout this process, I am continually trying to defuse the conflict and trying to encourage the parents to communicate and compromise for the best interests of their children. This is accomplished, I wish to highlight, through a human approach rather than a legal one.

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Positive results are there. Over time, some parents, not all—there are a lot of situations that do not become resolved. There are situations where supervised access is absolutely the only alternative for parents. However, there are situations where they can go from supervised access to unsupervised, and actually have access that is conflict-free and regular.

I would like you to turn to appendix 4 which is attached to my brief. I have a larger version of it here. This graph delineates the main reasons for referral to the supervised access program. What it also delineates is the number of families that are successfully able to leave the program and go on to unsupervised, conflict-free access. What I did was choose 100 families between April 1988 and February 1989. During that time 41 per cent of the families were able to successfully resolve access issues. I also wish to highlight that the most common reason for referral was domestic violence, and those cases also have the highest success rate.

I think there is no doubt that a program such as this one is very useful and very valuable. Both the Ministry of the Attorney General and the Ministry of Community and Social Services have openly stated this. However, neither

ministry has ever come forth with funds for the program, although we have approached them. A proposal was made to the Ministry of the Attorney General in early 1986. The response was that the ministry did not have funds allocated for such a service, so the proposal was sent to the Ministry of Community and Social Services. Although the program was applauded, we were told there was no money for it.

In October 1988 we submitted yet another proposal to the Ministry of the Attorney General. The program has yet to receive a formal response from that ministry. However, my understanding is that they are not prepared to provide any sort of funding for the program at this time. The answer we have been given is that the Ministry of Community and Social Services has funded a pilot project in Kitchener-Waterloo to assess the need for supervised access facilities.

I absolutely do not understand the reasoning behind this decision.

First, the government has been fully aware of the existence of our program for several years. They have our statistics on their desks. The answers to the questions they are awaiting from the Kitchener-Waterloo program we have documented and readily available over a period of six years.

Second, I hope that the Ministry of Community and Social Services will not attempt to generalize the results of the Kitchener-Waterloo pilot project to the rest of Ontario. Surely the needs of a relatively small centre such as Kitchener-Waterloo are going to be different from the supervised access needs of a large city like Toronto.

Third, the Ministry of Community and Social Services has given us no time frame for how long the project will run, the length of time it will take to obtain the statistics from the project and the length of time it will take the government to then make a decision on this issue.

I wish to highlight that the need for supervised access facilities in Ontario, and more specifically in Toronto because that is what I am familiar with, is a very real and immediate problem. I think further stalling will simply mean that the needs of the children of Ontario are not being effectively met.

Between October 1988 and January 1989 I had to turn away 44 cases, 36 of which were actual court orders. This was because our financial situation was very precarious. Our funding is extremely unstable and extremely insecure. We are always on the verge of closing.

I wish to point out that Access for Parents and Children in Ontario has been surviving on a budget of \$50,000 per year. We really need to double that budget, because I am the only professional staff member and I rely on volunteers. We need more staff because our numbers are growing. Really what we are talking about is a budget of \$100,000 a year. I think you would agree that that is a very small cost compared to the number of families we serve.

I also wish to point to the fact that United Way does not provide any funding. In a letter, United Way stated the following: "The dilemma facing United Way is the appropriateness of allocating scarce voluntary funds to a service that should be directly supported by the court system.... Our volunteers felt that the Attorney General and Ministry of Community and Social



Services need to work out a funding mechanism for what is clearly an important support to the judicial system."

I did follow up on some of the cases that we had to turn away and what I found was that a lot of those children were unable to see their noncustodial parents for months. Other families that lived in Toronto had to go outside of Toronto to find supervised access facilities. Yet other families were referred to private child care workers and social workers who require a fee of anywhere from \$25 to \$50 an hour. Most of the families we see are low-income families. They cannot afford this.

I have also heard of visits occurring in police stations and lawyers' waiting rooms. I think you would agree that those are appalling situations and certainly not conducive to healthy development of children. I strongly believe that there should be additional supervised access facilities within the city and within the province. I have delineated the places where our clients are presently coming from in appendix 9.

A lot of our cases come from all over Toronto and from other cities as well, simply because there are no other facilities. It is unfortunate that parents have to travel long distances with small children just so that the small children can have a relationship with their noncustodial parent.

I have one woman who lives in northwest Toronto with four small children all under the age of six. She is on social assistance. She gets up every Saturday morning at 5:30, dresses and feeds the children and takes three buses to Lakeshore and Islington so that her kids can have a relationship with their father.

Finally, in summary, I wish to reiterate that although I generally agree with the objective behind Bill 124, I fundamentally disagree with the way in which it proposes to achieve its objective.

I strongly believe that negotiating a particular access dispute and finding a practical solution for the problem is much more preferable to placing two already angry, embittered spouses once again into an adversarial process which might only foster further resentment and conflict. I do not feel that the court is necessarily the best place to resolve practical, emotional and family-related problems.

I strongly believe that the provincial government needs to put into place mechanisms that will allow practical and sensitive ways to deal with difficulties which arise in the context of access situations. More specifically, the government needs to fund agencies, such as Access for Parents and Children in Ontario, throughout the province so that: (a) children can have access to their noncustodial parents in a way that is nonthreatening, helpful and pleasant; (b) parents can be assured of a neutral ground and a neutral professional who will assist in resolving concerns regarding access, and (c) additional conflicts and additional battles that the court system is bound to evoke can be avoided.

Again, I wish to reiterate that the legislation means nothing without proper and practical facilities available in our province that will enable the legislation to be implemented. Moreover, I think you would agree that the cost of supervised access programs would be minimal as compared to the high costs of our legal system.



Mr. Chairman: Thank you for a most interesting presentation. We have three questioners and five minutes.

Mr. R. F. Johnston: First, it is very hard for anybody to find a middle ground here between the various positions we have been hearing. But if anybody has some pretty good practical answers for both sides here—the noncustodial parents and people who are concerned about particular groups, like battered women, being victimized in the system—I think your paper has addressed a lot of those concerns.

One of the things I specifically liked is that you are the first person who talked about a cooling-off period and how dangerous this 10-day period might be. I think that is a very practical kind of consideration to raise.

In your chart, which I find both fascinating and impressive, there is no indication about how many of the people who were in this survey actually ended up going back to court. The reality for people who are not using this sort of thing is that we are hearing that they are always back in court and getting no remedy. What sort of numbers would end up not being able to maintain even their supervised access with your help and have to go back to the court system?

Ms. Dabraio: I do not have a specific number, but I can tell you that it has been my experience over the year I have been at the program that the number is very, very low. Off the top of my head, I think in all the cases I have dealt with within the past year, approximately 10 of them have had to go back to court. That is very low, because we are looking at very high numbers in terms of the referrals.

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Ms. Poole: I found your presentation very interesting. You mention that yours is the only organization in Metropolitan Toronto that provides this type of service. I want to confirm that because it is in the back of my mind that you are the same as the Lakeshore Area Multi-Service Project. Are they synonymous?

Ms. Dabraio: They are synonymous.

Ms. Poole: So Access for Parents and Children in Ontario is the same group that we have heard so much about, LAMP.

Ms. Dabraio: It is LAMP.

Ms. Poole: I just wanted to congratulate you since that is the case, because I have heard absolutely nothing but good about LAMP. I, for one, am a very strong proponent that you deserve the funding, whether it be through the Ministry of the Attorney General or the Ministry of Community and Social Services, and I very much hope you get it in the near future.

Ms. Dabraio: Thank you.

Mr. Daigeler: I was wondering, first of all, whether you have made application to the Trillium Foundation.

Ms. Dabraio: No. My predecessor contacted them. Apparently, you have to have a number of different locations in the province for the Trillium Foundation to provide funding.

Mr. Daigeler: As far as I know, the purpose of the service has to have a number of different locations, which would certainly qualify you. I am not an expert on Trillium, but I would encourage you. I just read their annual report yesterday, and in light of what they describe in there, I think it would be worth it to make an application and pursue that further. It is simply a suggestion.

Ms. Dabraio: I appreciate that.

Mr. Daigeler: I do not want to put you on the spot here, but I find this quite interesting in terms of the title. In your own personal curriculum vitae, you make reference to a paper that you gave in 1987 entitled Sexual Abuse Allegations in Custody and Access Disputes. As I say, I do not want to put you on the spot but I just wonder whether you can remember and give us very briefly the main thoughts or conclusions of this particular paper.

Ms. Dabraio: That would be a very long answer.

Mr. Daigeler: Perhaps it is not fair. If it is possible to give it to the clerk, I think this would be interesting.

Ms. Dabraio: Definitely.

Mr. Chairman: I would like to put one question to you. Some previous presenters have indicated, in representing women who have been abused or in abusive situations, that once a father has been abusive or exhibited violence, there is virtually no reform. You cannot trust them again and the women do not trust them again, and that is why they do not want the children to go there and be exposed to that.

I was interested in your graph where you said that the past violence in a marriage—the dark ones, I understand, are families who graduated to unsupervised access. Have you had any incidents of violence occurring? Once they have graduated to unsupervised access, do you monitor what happens there? Have they been successfully seeing their children without evidence of violence?

Ms. Dabraio: They have been successfully seeing their children without evidence of violence. What I say to the families when they leave the program, and this is one of the assurances to the noncustodial mother—for the sake of discussion, let's say it is a mother, a battered woman—is that she can return to the program at any time. Of that percentage of families who have graduated, none of those women have returned to the program. None of them, as far as I know, returned to the court. They often call back to let me know how things are going.

Mr. Chairman: You provide the certainty of mind, because the mother knows that you are there as a safety net.

Ms. Dabraio: Yes.

Mrs. Grier: I just wondered when your funding ran out.

Ms. Dabraio: Our funding will run out at the end of May.

Mr. Chairman: My apologies, Mr. Jackson. I did have you on the list next. It slipped my mind. I will give you a minute.

Mr. Jackson: On page 9, you reference the struggle to get recognized

and then funded, first through the Attorney General's route and then through the Ministry of Community and Social Services. I am anxious to get more feedback from you on the nonresponse from the AG's office and what, if any, information you have specifically about the Kitchener-Waterloo project.

If I read between the lines here, you are suggesting that perhaps certain assumptions should not be transposed on the need in Toronto because of the small pilot project in the minister's riding?

Ms. Dabraio: To answer the first part of your question, we submitted this proposal to the Ministry of the Attorney General in October 1988. We have not yet received a formal response from that ministry, but my understanding is, from hearing the Attorney General in the House, that he is saying he is awaiting the response from this pilot project; so he is turning it over to the other ministry. That is all I know in terms of where they are at. This has been going on for years, back and forth, back and forth.

Mr. Jackson: Have you written the Ministry of Community and Social Services to find out from Mr. Sweeney when he is going to report on the findings? You have a copy of them or you are conversant with them. I was hoping you would share with the committee what you are seeing in those findings.

Ms. Dabraio: The Kitchener-Waterloo findings? They are not yet available. I do not know when they are going to be available. We have approached---

Mr. Chairman: Mr. Jackson, I am not sure if you were here when it happened, but our researcher has been asked to try to find out the status of --

Mr. Jackson: I understand that. I got from the presentation that you had a basic understanding of what was happening up there. That is all I wanted you to share in a more detailed---

Ms. Dabraio: Yes. My understanding is that they have served very few families within the time they have been operating, and that is why I bring forth that concern.

Mr. Jackson: Thank you.

Mr. Chairman: Your presentation has been most interesting and helpful to the committee. We thank you for coming.

The next organization to appear is the Canadian Council for Family Rights; representing this organization, David Blair. Welcome to the committee. You have half an hour to divide as you see fit between presentation and questions. We would ask that you refrain from making reference to any specific cases which may be before the courts, or likely to appear before the courts in the next while. You may proceed.

#### CANADIAN COUNCIL FOR FAMILY RIGHTS

Mr. Blair: Thank you very much. I apologize for not getting this to you earlier. We had some problems about who was going to appear today because of work schedules; at the last moment I got chosen. I should forewarn you that I did not realize the council was coming to do a presentation when I was elected to it at the end of February, so you will be subjected to me tomorrow as a private mediator at about the same time; a different viewpoint totally. I

am representing Canadian Council for Family Rights at this time.

Mr. Chairman: We will be interested to hear your views as a mediator. I am sure the committee has become quite fascinated with that subject.

Mr. Blair: I look forward to sharing it.

As I said, I have just been elected as second vice-president to the Canadian Council for Family Rights. Although we have shared common interests for a long time, it is a new organization to me. If you know nothing about the council, you will find in the last two pages of the brief I have given to you an outline of the brochure which we distribute publicly. On the second-last page you can see that we are a nationally representative organization. We lack groups in only three provinces: New Brunswick, Prince Edward Island and Manitoba. We are presently, as of last week, negotiating a membership—not that we sought it; they came to us—with the Canadian Association of Separated and Divorced Catholics, who are very interested in working with us on common issues.

We are basically an umbrella group that works with these organizations. We try to liaise. We try to advocate the various positions and to address bills of this nature. At our annual convention at the end of February, we made reports to the federal level regarding many of these issues that are before us today.

First, I would like to say that we are very happy that the government has finally come to the point of seeing a real necessity for enforcement of access. As probably many of your prior speakers, particularly the last lady, have said, I do not see this as the solution to the problem. There are other factors and dynamics that need to be addressed in a preventive medicine type of thing such as the provincial government is looking at in other areas of social development and welfare.

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I guess we see access enforcement as being for a specific group of people who have not been able to negotiate individually without the help of lawyers or mediators or been able to take the court's suggestion and follow a court order. Unfortunately, a lot of those people are quite rational people when they are not going through the kind of emotional stress and hassles that arise at this particular time. But there are those who just, for various reasons—and I will not argue with them at the moment—cannot adhere to a court order or a mediated agreement.

If we are truly interested in protecting the children, as I believe we all are, we really have to do something about that. Before I came today, I scanned through the 1982 bill again, and it struck me that there was already legislation on the books, laws on the books. In my experience in court and in mediation, I have difficulty ever finding a case where the existing enforcement has ever been put into practice.

There are many cases, and particularly my own, and I have not been in the courts for the last four years, but I spent seven years in and out of provincial and Supreme Court in Sudbury simply trying to protect my access. I was not a violent person. I was just a parent trying to get access to my kids, who had been removed 460 miles away. Geography presents another leverage for manipulation, denial and hassle. But the amount of money and the amount of



time drove me to burn out, it drove me to be \$35,000 in debt to ensure that I saw my kids, and it almost ruined my career, because I could not perform properly at work under the stress. It almost ruined me financially.

I do not tell you that to make a martyr out of myself, because I am simply representative of many thousands of other people who are denied access, although maybe not to the extreme that I was. Somebody jokingly said the other day, "Get Dave to write the paper on access denial; he has probably experienced it all." I have experienced some rather unusual stuff.

At this point, if we are talking about enforcing access, we have to have a bill that has teeth in it. We are not talking about the 80 to 85 per cent or whatever it is out there who can, through mediation and continuous working with people, come to an agreement; people who, if there is a penalty, will start to adhere to what the intent of law is about.

As this bill sits, I see little opportunity to do more than slightly change the status quo. The opportunities for manipulation are still there, and they are there in greater abundance in some cases, because now we are stating, whereas before we did not, that one parent has that total balance of power, and that is the custodial parent. It is now stated, whereas before it was assumed and it was operated on. That is dangerous.

If we remove the contempt-of-court potential, I really honestly cannot say right now whether it will do any good. I would say that the contempt of court is in the existing law but it has never been enforced, and I do not know why. I have my own private theories, which I may share with you tomorrow, but they may not represent the Canadian Council for Family Rights.

Whatever happens, whether it is the existing law or whether it is new law, it is no good unless it is adhered to. That is the main point that we need to look at. A contempt-of-court order should be available. It should be used. I know it is used to enforce other aspects of family breakdown, particularly aspects where money issues are involved, and where a person does not even behave properly in a court setting. What could be more important than employing a contempt-of-court penalty as a method of trying to bring somebody under control?

We say: "Oh, it would cost too much. A \$1,000 fine as it exists in the law right now or a small jail term." One of the problems with people whom I counsel is that you first of all have to get their attention. With people who are as emotionally distressed and harassed, not only by each other but harassed by the court process and lawyers, it is hard to get their attention. Some of them are incapable of grasping their situation; some of them are incapable of understanding. So you cannot break through the shells of defensiveness that they have created around themselves to simply survive. You cannot get through to them.

Maybe a contempt-of-court order would do it. Unfortunately, a lot of us live in our pocketbook. When our pocketbook gets hit, we somehow wake up or come to attention. Somehow when what we cherish, our freedom, is compromised we then start to pay attention. I am not saying that is the only thing that could happen.

One of the greatest problems is the problem of repeated denials of access and there are a number of ways in which that can be manipulated. When the power for that is put into the hands of the custodial parent it even becomes more serious, as I have said. The existing or proposed bill should

have in it some very specific penalties not that may happen but that will happen. When it says "may," it means we can go into court and if we can hire the fanciest lawyer, the slickest lawyer, we can avert that particular penalty—I have seen it many times—by stalling, by delays, by adjournments, by loss of papers, by blaming the poor legal secretaries for not filing this, and all kinds of other mechanisms. Cases can be delayed and befuddled and nothing happens. We are working on a "may" issue.

If we were looking at a preventive medicine type of thing, what we should do is state directly that if a denial unlawfully happens, the first time there will be a specific penalty. If it happens a second time, there will be an increased penalty, moving gradually towards a reversal of custody.

If you do not set out the grounds, you cannot play the game. There would be chaos if the Blue Jays and Kansas City went into the SkyDome and there were no rules for baseball. You have to have it laid out. You have to know what to expect, and right now there is nothing at the end of the road. You can play the game, you can jerk around, you can manipulate, you can do what you want, but there is nothing that says definitely what will happen to you if you abuse your children by using them as a tool in access denial. There are maybes, but I have yet to see any of the maybes that have existed in the last 10 years applied. So whatever comes out of this bill, it is important that the courts start to apply it; not leave it on the books and not use it. The intent of the bill is excellent but there is a lot that happens between the intent, the description of it in law, the interpretation of it by a judge, the application of it thereafter in a particular order and then the adherence or nonadherence to it by the parties that are involved.

We have many parties who come before the judge and because they are facing the legal god, if you want to call him that, they agree. "Yes, when I am in front of the judge, I will agree. But when I go home and I move to my home which is 150 miles away or I am not in front of the court, it is very easy to forget what the judge has told me I must do, particularly if I do not want to do it." There are many cases of this right across the province; not only across the province but I am dealing with an international case right now involving children who have been removed to Holland. It is the second such case. There are other cases where we are talking children being removed from the United States to Canada and vice versa. We have probably heard histories from many of these, so I will not go into them. The enforcement of access must expand itself, not just in Ontario, but to all the other provinces. There must be a federal or federal-provincial partnership in administering this kind of security for children and for the parents involved.

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In my brief, we state that there seems to be almost a preconceived prejudice, that as the bill is written it presumes that there is bad will, that it almost anticipates a criminal act and assigns guilt to and vilifies the noncustodial parent. I have seen many cases where that is the case and I think that needs to be seriously addressed.

I have mentioned before that the discretionary power of the custodial parent is a dangerous situation. It does not always operate in the best interest of the children, and to be preventive the balance of power must be altered. I will simply state that one thing that would prevent this, which does not fall under this particular bill, is a rebuttable presumption of joint custody so that you have a balance of power to begin with.

The burden of proof seems to be on the victim, the one who has been denied the access, as this bill is written. I have some difficulties with the oral presentation. I would say that they are very similar to those of the lady who spoke previously. I will not run through them again for you. Some people have the ability to speak; other people do not have the ability to speak. I am very much aware of the fear, terror and intimidation of simply walking into a courthouse because it is a place that people associate with being in trouble, with being a negative place to be, with having broken the law and all the other things that go with that.

That is intimidating enough in itself, other than to have to answer to charges which may or may not be true, allegations which are tainted with personal prejudice and other things which are inflammatory and only increase the adversarial nature of the proceedings. There need to be some specifics drawn up as to how that evidence will be given at those particular hearings.

The question there too is whether it will be just two parties who are involved or whether they would be permitted to in bring a witness. I am not sure what the intention of this legislation is, but without having the ability to bring in a witness, you virtually have a situation that is unprovable. It is one person's word against another person's word.

I myself have had to go to the expense and difficulty of obtaining witnesses to go with me at the time of my access. I had to drive them all the way from Sault Ste. Marie, 260 miles to the little paper town of Marathon on the north shore of Lake Superior. Most people just cannot afford the five hours one way, the five hours back and maybe a day in between to do that kind of thing. But witnesses are essential.

Mandatory mediation is a questionable situation. I realize that. But in these situations, not only in access, mediation can and does play a valid and proven role. From my own practice and the practice of those I work with, I know that mediation can work when it seems that nothing else will. Because there has been a case of emotional or physical contact between two parties over an issue, be it the fact that an affair has just been revealed or that a person is deeply wounded, does not mean that it needs to be dealt with in a criminal format.

I think the chart of the lady previous to me, whom I was very glad to hear, proves that there is a chance of rehabilitation. I think we need to keep that foremost in our mind. Mediation will help to bring about that kind of situation.

We have suggested a possible series or progression of approaches to that, in that mediation, being mandatory, would be the first way in which disputes be addressed. Second, we may need to work jointly with a pre-trial process or judge in some form. Then, if in the long run that is not accepted, we go to court. I do feel we have things in reverse order. We run to court before we try all other methods.

The Vice-Chairman: I do not know if you want to sum up your brief, because you seem to have wandered some from the text you presented to us. Mr. Johnston would like to ask one question and you have around 10 minutes or slightly less left.

Mr. Blair: Thank you. I will just briefly speak about the other points then. We at CCFR wholeheartedly endorse supervised access places. They are essential. I have worked in that without an organizational format, and it



certainly does make a difference.

We have to be careful, as I have mentioned, about geographical relocations if we are really concerned about looking after the interests of children. I know there are arguments about job opportunities and that sort of thing but certainly, at least in an area like Metropolitan Toronto, we have just about every kind of job it is possible to have. The relocating parent should seriously consider whether it is best for the child to remain in the area. We know from sociological studies that the less disruption in a child's life the better.

The close, frequent and continued contact of both parents is essential. We have heard lots of problems that the adolescents, the young children can have when they lack that. It is essential that we do not cut off part of a child's identity by removing a parent; that we do not cut off part of the support system in the other parent, whether male or female.

I have already spoken about interprovincial enforcement, so I will not speak about that any further.

We basically and wholeheartedly support access enforcement. It is essential at this point in time, regardless of what happens in future legislation in other areas. But we support it only with amendments which will give it the strength and ability to actually be enforced and put into practice.

You can see our recommendations on page 3 of our brief. We are very much concerned with the repeat of access denials and we need to have an insurance of accountability. Other recommendations are:

That Bill 124 acknowledge that a court order for access be given in the best interests of the child and it must be respected.

That Bill 124 ensure that the onus or burden of proof be removed from the parent denied access and placed upon the parent exercising the denial.

That Bill 124 support mandatory entry into family mediation in the area of access disputes as a prerequisite for litigation in the courts.

That Bill 124 encourage the implementation of supervised access centres utilizing services provided by a neutral third party if deemed necessary or requested, and the request is something we feel should be just as viable as a court order.

That Bill 124 ensure that custody reversal be considered as an option as the final measure in continued access denial.

Finally, that Bill 124 and, most important, the province of Ontario urge the federal government to ensure that each province develop and implement uniform access legislation with comprehensive enforcement components across Canada.

Mr. R. F. Johnston: A couple of comments, first, on the existing section 39, which has to do with the \$1,000 fine and imprisonment not exceeding 90 days, which I am not sure I put down as a small punishment.

Mr. Blair: Do you have a page number there?

Mr. R. F. Johnston: That is of the existing act, not of Bill 124.



Mr. Blair: Are you talking about Bill 125?

Mr. R. F. Johnston: No, I am talking now about the present Children's Law Reform Act which we are amending with Bill 124.

You are basically saying it is not being used, etc., and you want "may" to be changed to "shall," essentially in terms of the judges' powers there. Traditionally, part of judging is that you give judges the ability to make the decision as to how they want to implement it and not to be too absolutist. That is why the language is traditionally that way when it comes down to fines and imprisonment.

I do not think that would change just in terms of the way we frame laws around here, although certainly attorneys general in the past have sent directives off to judges indicating the strength by which they wished certain kinds of interpretations to take place. That has been discussed by panels of judges and then implemented. I am thinking specifically around family violence and changes have taken place in that way in the last years. So there is a remedy to that concern.

The second part of that is that a group of women lawyers who were here before us said that they did not think the solution was the imposition of the penalties, in that the people they were dealing with were so much at each others' throats on this whole matter that some of them would say, "If I have to go to jail, I'll going to jail," but still would take this kind of action.

Coming back, if I might, to the last presenter and tying it in to what you have just been saying in terms of the approach on this, I am wondering if we do not have to—and the person who was talking about mediation before that. I am not sure if you were here for that.

Mr. Blair: I was not here for that.

Mr. R. F. Johnston: Perhaps an option we should be looking at—prior to this court process that we are putting in now for looking at enforcement measures, when there has been some denial of access and there is a dispute started about that—might be to take supervised access at that point, if it has been an unsupervised agreement. Perhaps that would be helpful.

Would allowing them the option of mediation rather than mandatory mediation at that point, given the concerns that mediator had about mandatory mediation, and offering them a chance to develop parenting plans, as he suggested, before they go to the court, be a way that those kinds of things might resolve some of these problems in the interim, through a resource centre like the access group we just heard about?

That would be an important stage to put in between the concern being identified about denial and the court process that the Attorney General's people are suggesting here which then orders mediation subsequent to that if necessary, etc. Maybe there is something that should be imposed or offered to people as a solution prior to that.

Mr. Blair: Are you talking about the point at which there is a conflict identified?

Mr. R. F. Johnston: Yes, before you actually hit the court itself.

Mr. Blair: I can basically agree with you, Mr. Cousens—

Mr. R. F. Johnston: Don't, please, no.

Mr. Blair: Mr. Johnston. My apologies. The pitcher of water there obscured my vision. I do not want you to have to carry two hats here.

That could be good as long as it did not become a method of prolonging the process. I think one of the most immediate emotional issues, both for a child and a person who is denied access, is the fact that they have anticipated this access. If it is a monthly thing, if it is a distant thing, you gear up for that from the time you leave until the time you get there again. The anticipation, all of it, is there. For a person not to show—it is one thing if it is their choice or they are unable to do so. Neither is good, but acceptable, hopefully, under certain circumstances. But to have it yanked out from you—

I can remember leaving work at 3:30 on several occasions and the phone ringing at the school and saying, "Don't bother driving the 460 miles because the kids aren't going to be there when you get there anyway." I have the order in my hand that they are supposed to be there and all this sort of stuff.

Getting into mediation could prolong it. It is needed to be remedied quickly.

The Vice-Chairman: Thank you very much.

If we may have the next and last group of the day, please, the Interclinic Working Group on Domestic Violence, Hattie Pollak, you may begin, Ms. Pollak.

#### INTERCLINIC WORKING GROUP ON DOMESTIC VIOLENCE

Ms. Pollak: Because of the late point in the day, I will be brief and I will follow our written submissions fairly closely, partly because we had only a one-day notice to present.

The Interclinic Working Group on Domestic Violence is composed of members from the community legal clinics in the Metropolitan Toronto area. Our members include community legal workers, lawyers and law students. I myself am a third-year law student currently doing a clinical term at Parkdale Community Legal Services in the family and welfare division. As front-line workers at the community legal clinic, our field of expertise is in poverty law.

We have read the submissions of the Ad Hoc Woman Lawyers Committee and the National Association of Women and the Law, and while we endorse them, because of the particularly narrow focus of our group, our submissions will deal with a much narrower range of issues.

For the most part, our members are not directly engaged in the practice of family law, but most of us do provide summary advice and in crisis situations we provide support and emergency referrals. Some of our members do work at clinics which are able to provide ongoing support, even after a client has been referred to a member of the private family bar, particularly in cases of domestic violence, where often more support is needed than what a private family lawyer can provide. It is from that background in both poverty law and work in domestic violence that we speak to you today.

We do advocate on behalf of those victimized by domestic violence, and we have been in existence as a group for about four years. A couple of our

current projects are working a lot around the new social worker on call program, which is working with the police in response to calls reporting domestic violence. Another current project is holding training workshops for staff at community legal clinics around Metropolitan Toronto to help to provide a standard and effective response to crisis calls to the clinics in cases of domestic violence.

Because our focus is mainly on domestic violence, I would like to take a moment to comment on that situation. We believe that there are specific implications in the proposed Bill 124 in the area of domestic violence, and when I speak of domestic violence, I am going to speak in a gendered way, because domestic violence is largely a gendered phenomenon. When you have a gender reversal in a situation of domestic violence, it is quite notable, and in that case, certainly the exception proves the rule.

The prevalence of wife assault cannot be accurately represented in statistics because of its very private and secret nature. Statistics on wife assault are hopelessly underrepresentative of the extent of this crime. However, our experience working in the field of domestic violence reveals a pattern.

Typically, the relationship is one of extreme emotional interdependence, which, in a climate of gender inequality such as we are living in today, allows the abusive man to manipulate his position of dominance in order to maintain a strong hold on his wife.

He is desperate to keep her, so desperate that he is willing to use physical force or psychological terrorism to attempt to gain absolute control over the situation, and we consider psychological, emotional and financial abuse to be a form of violence as well.

The abusive man punishes his wife for any independence and exercises a tremendous degree of control over even the most basic aspects of her life, such as her choice of friends and her access to family finances and social services.

This emotional interdependence, along with social, financial and practical barriers to leaving the relationship, coerces a woman to remain in even a very dangerous situation. Damned if she does and damned if she doesn't, she is unlikely to find support even among the family and friends who may believe what is happening to her, and of course, many do not believe it.

Her community does not understand why she seemingly chooses to subject herself to this violence again and again. At the same time, she may receive conflicting messages from other quarters of her life. When she is finally able to make her first attempt to leave the relationship, she is subjected to pressure from her children, from other family members or her religious and/or cultural community to keep the family together.

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We believe it is irresponsible for the government of this province to provide legislated tools for use by abusive men to harass and manipulate women and their children during this crucial period shortly after separation, when a mother is trying to extricate her family from the source of this abuse.

The Interclinic Working Group on Domestic Violence strongly recommends that Bill 124, which proposes amendments to the Children's Law Reform Act,

which I will call the act, should not be passed in any form. Our concerns are as follows:

1. This sort of legislation promotes the use of courts as a tool of harassment.
2. The proposed legislation would allow the access parent to extend domestic abuse long after the court has specified terms of separation.
3. The legislation does not focus on the best interests of the child.
4. The procedures contemplated do not adequately address the inequality of bargaining power in situations of domestic violence.
5. The timing and procedures proposed by the amendments to the act are unrealistic for the legal aid client.
6. The recovery of reasonable expenses as a remedy for the access parent may not operate in the best interests of the child in the long run.

It is our experience that the abusive spouse will use any and all means available to wear down the emotional and financial resources of the abused spouse in order to regain a sense of control over the relationship. The threat of litigation is one of the most effective weapons used by the abusive spouse.

Battered women learn to minimize and endure their own injuries and suffering because they feel their choices are very limited. This perception may be the result of years of battery of the ego or a belief that it is worth it to put up with it for the appearance of financial and/or emotional stability that the concept of a traditional family unit may provide for themselves or their children. The threat of litigation may shake a woman's resolve to leave an abusive relationship because such a threat targets, first and foremost, the stability she most values.

The abusive spouse usually finds the greatest degree of success in a relationship of mutual dependence, and that is thought to account for the pattern of the wife attempting several times unsuccessfully to leave the relationship before finally breaking away permanently from the cycle of abuse. The ever-present threat of drastic court action of the type proposed by Bill 124 would provide the abusive spouse with sufficient leverage to regain control over the relationship and could conceivably perpetuate the cycle of abuse to no end.

The Interclinic Working Group on Domestic Violence is concerned that in the time limits proposed by this legislation there has been no allowance made for the involvement of the official guardian in determining what would be in the best interests of the child in resolving the conflicted access situation.

Our attention is drawn particularly to changes in wording in clause 24(2)(b), which presently directs the court to consider the best interests of the child "where" these can be reasonably determined. The proposed section, as amended, would direct the court to consider these interests "if" they can be determined.

If no change in meaning is intended by the drafters, then this change in wording will needlessly promote litigation by family lawyers who will rightly feel that they owe it to their clients to seek a judicial interpretation of the new wording. If a change in meaning is intended by the drafters, we are



concerned that the intention, given the time limits imposed by the proposed amendment, is to diminish the importance the court ought to place on using the services of the official guardian, whose services are specifically to represent the best interests of the child to the court. In either case, we strongly recommend that the clause should not be amended as proposed.

The proposed amendments do not address the terrorism of domestic violence. Once an abused spouse has removed herself from the relationship, we consistently find that what she fears most is facing her abuser in court. That is the first question that comes out of her mouth after the possibilities of legal action have been canvassed with her.

Usually by the time an abused spouse has resolved to commence family court action, she has suffered literally years of abuse. Often she has already had the experience of being compelled to testify against her abuser in a criminal assault trial, in which case she has typically been subjected to a variety of abusive manipulations, including threats by the abuser and possibly his family against her, her children and her family.

The abusive spouse is an expert at terrorism and manipulation. The proposed legislation would function as another weapon in the arsenal of the abuser. We are concerned that this legislation may actually be used to extort access even on occasions when it is not in the best interests of the child; for example, when the child does not wish to see the access parent or when the child is ill or when the access parent is intoxicated and/or likely to expose the child to physical or psychological harm.

Inequality of bargaining power is of particular concern to the legal aid client, who may not be able to obtain a legal aid certificate or counsel of her choice in time for a viva voce hearing on 10 days' notice.

The committee may be aware that in cases of domestic violence an applicant for legal aid may apply for a red tag legal aid certificate, which does in theory give her the possibility of a legal aid certificate within 24 hours, but then, once she has the certificate in her hands, she still has to find a lawyer. So the delays are going to be, at minimum, two or three days within this 10-day period.

We are also particularly concerned for the welfare of the child of a low-income custodial parent. Such a parent may be neither eligible for legal aid nor in a position to pay for legal counsel.

After separation, studies show the woman, who is most often the custodial parent, typically suffers a drastic decline in her financial resources while the man, who is most often the access parent, typically experiences a marked improvement in his financial circumstances. This gendered financial inequality means that this legislation will have a negative differential impact on most custodial parents, who will be disadvantaged in access to the resources required to defend the proceedings contemplated in Bill 124.

We are also very concerned with the proposal that "reasonable expenses" be recovered in the case of denial of access. Even the threat of this remedy could be used to harass and intimidate the low-income custodial parent.

The ultimate cost here is borne by the child. The access parent, typically better off financially than the custodial parent, may incur expenses in anticipation of access which may be reasonable for the access parent but

may be far beyond the means of the custodial parent. The bottom line for the low-income custodial parent is that these expenses will be deducted either from social assistance or from the child support cheque, and that, of course, in the final analysis, is to the detriment of the welfare of the child.

In situations of financial inequality, particularly where the custodial parent has only a marginal income, there is tremendous potential for this remedy to be used as a sword by the access parent rather than as a shield. The access parent may use the threat of this remedy to coerce access even where it may not otherwise be in the best interests of the child.

Alternatively, the access parent might use this remedy, along with the other provisions of Bill 124, to harass the custodial parent financially and emotionally to the point where she may perceive her parenting abilities are so seriously jeopardized that she may consider reconciliation with an abusive spouse or surrendering the custody of the child to the abuser.

In conclusion, the Interclinic Working Group on Domestic Violence opposes the passage of Bill 124 in any form. It is our position that the proposed amendments are likely to be used by abusive men to harass and intimidate women and their children. The proposals would have particularly drastic consequences for low-income parents and their children, who are of particular concern to our group.

Mr. Chairman: Thank you very much for your presentation. Do any members of the committee have questions? Mr. Cousens. I am sorry, Mr. Richard—Mr. Johnston.

Mr. R. F. Johnston: Thank you very much, Mr. Ruprecht, if I can just up the ante a little bit here. I should not say that; I am sorry. No, never mind.

I wanted to raise the matter of the rights of the child specifically, and your question about the best-interests change in language. It has been a little bewildering to me that the only change in language was that "where" to "if," rather than looking at the Child and Family Services Act rights of children that are presumed throughout. I do not know how familiar you are with that legislation, but there are rights of notice, rights of consent where 12-year-olds and seven-year-olds have a right to have a say on whether they will be adopted or not. A ward of the state who is 12 years of age can state whether or not, when he ceases to be a ward of the state, he wishes to have access again to the parent who might have been an abusive parent beforehand, etc. There are many more powers for the child, and notice and standing before hearings.

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Yet in this legislation, although supposedly everything is being done in the best interests of the child, there is really nothing to facilitate the child's role in all of this. I wanted to ask you what you thought appropriate changes might be in terms of a child of, say, seven, eight, 10, 12 years of age as compared with a child of a much younger age in terms of his role, especially when you do not, I gather, want to see the litigation side of this expanded greatly. Where do you think the role of a child and advocates for the child should come in all of this?

Mr. Chairman: Richard, do you have your microphone covered or something, because we are having trouble hearing you.

Mr. R. F. Johnston: I have two of them on here; they are both blinking. I am sorry. Would you like me to say it all again?

Interjection: No, summarize it.

Mr. R. F. Johnston: I am disappointed that this legislation does not have more in it about specific rights of the child and putting the child into the process so that the child's wishes around access can be known. There are examples in legislation where we have done a great deal to enhance the role of the child, both in the litigation sense in terms of automatic representation by lawyers and also in other, less formal processes for the child's wish being expressed by the child and not interpreted by someone else.

Ms. Pollak: First of all, I would like to preface my remarks with, again, a reminder that none of the members of our group actually practises family law as such. Second, we in community legal clinics do not represent children in these matters, because they are already represented by the official guardian.

It is a position of our group that this legislation is flawed for many reasons, but also because it is not sufficiently child-focused. There should be, at a minimum, more provision in this legislation for the representation of the child through the official guardian and of course whatever means can be brought to court in order to make sure that the child's wishes are known, where the child's wishes can be determined, and they are usually determined through the office of the official guardian.

Mr. Chairman: Any other questions? If not, thank you for coming and sharing your views with the committee.

Mr. R. F. Johnston: Mr. Chairman, I have two matters I want to raise.

Mr. Chairman: Not related to the delegation?

Mr. R. F. Johnston: No, it is a point of order: One relates to this whole question of the rights of children. I am wondering if it is too much to ask our research officer to do a bit of a survey of the Child and Family Services Act. I have done one myself, looking at a range of sections which, in different frameworks, deal with the rights of kids in various processes. I would be glad to help the researcher find the appropriate places.

There are some 20 to 25 direct statements about rights of children within that act which I think would be useful for members to see in comparison with the basic absence of any statements about them within in this act or proposed law—if members think that would be appropriate. Otherwise I will just keep raising them on an ad hoc basis. But it seems to me that as a background paper it would be useful, maybe not so much in the young offender side of things, but certainly in terms of wardship and a child in need of protection and a couple of the other approaches that are used, such as adoption. It seems to me that there are some legitimate precedents here for us to look at in terms of the right of a child to be represented or ways of his being heard which are slightly more formalized than we have in this law with the implicit role of the official guardian as the essential player.

Mr. Chairman: I see our researcher nodding.

Ms. Swift: Certainly that would not be any problem. It is unlikely that I would be able to get to it before the end of the public hearings.

Mr. R. F. Johnston: Oh, no, I am not worried about that. I was thinking of it as being something that could be sent to us after the public hearings are over for us to have a look at as we try to draft amendments.

Mr. Chairman: On that same subject, I would be interested in knowing—perhaps the Attorney General's ministry would be able to comment on this—whether those rights of children as laid out in other parts of the Children's Law Reform Act apply.

Mr. R. F. Johnston: In certain cases they can. If a child or an advocate for a child wishes to say that child is in need of protection because of major problems around access, then the Child and Family Services Act would come into effect and then it could be used.

Mr. Chairman: I would be interested in hearing more about it.

Mr. R. F. Johnston: The other matter I wanted to raise that we did not get a response to the other day was the mediation report that is supposedly coming down the tubes and being translated. Somebody asked, almost rhetorically, when we could expect it and we did not really hear; we just heard it was in translation. Is there any notion of when that might happen?

Mr. Offer: I can respond in terms of its translation and what not that there is no date I can give you yet at this time, except what we indicated about where the report is at present. In terms of a specific date, I cannot provide that, because I do not know it.

Mr. R. F. Johnston: I think there are some interesting presumptions in that report that members should know about.

Mr. Daigeler: Do we have an agenda for tomorrow's session?

Mr. Chairman: We have a full agenda for tomorrow.

Mr. Daigeler: I am just wondering whether you already have a copy.

Mr. Chairman: Yes. Do members not have copies?

Mrs. O'Neill: Not yet.

Mr. Chairman: The clerk tells me he distributed a long-term agenda for all four days to members. Are there changes? No changes for tomorrow. I will just say we have a full morning and a full afternoon. Okay. Thank you for coming, for being so helpful. The meeting is adjourned.

The committee adjourned at 5:28 p.m.



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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHILDREN'S LAW REFORM AMENDMENT ACT

WEDNESDAY, APRIL 12, 1989

Morning Sitting

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

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VICE-CHAIRMAN: O'Neill, Yvonne (Ottawa-Rideau L)

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Substitutions:

Offer, Steven (Mississauga North L) for Mr. Beer

Reville, David (Riverdale NDP) for Mr. Allen

Clerk: Decker, Todd

Staff:

Swift, Susan, Research Officer, Legislative Research Service

Witnesses:

From the Ontario Public Service Employees Union, Local 311:

Rosenitsch, Norman S., Representative

From the Interval House of Hamilton-Wentworth:

Corbett, Margaret, President, Board of Directors

Davidson, Gwen, Executive Director

Hafner, Sharon, Court Support Advocate

Individual Presentations:

Potomski, Bob

Chisholm, Barbara A., Child and Family Consultant

Gafni, Carisse M., Child and Family Consultant

Dabraio, Rachele G., Executive Director, Access for Parents and Children in  
Ontario

Quinn, Ron L.

From Fathers for Justice:

Sauvé, Ron, Vice-President

Salmond, Brad, President

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Wednesday, April 12, 1989

The committee met at 10:11 a.m. in room 151.

CHILDREN'S LAW REFORM AMENDMENT ACT  
(continued)

Mr. Chairman: I call the meeting to order. This is a meeting of the standing committee on social development, called to consider Bill 124, An Act to amend the Children's Law Reform Act.

Members of the committee, we have a very tight agenda for the day with a full list of delegations. We will begin with the Ontario Public Service Employees Union, Local 311. Representing that organization we have Norm Rosenitsch. Welcome to the committee, Mr. Rosenitsch.

Mr. Rosenitsch: Thank you.

Mr. Chairman: You have one half-hour to make your presentation. You may reserve time for questions within that half-hour from committee members, if you wish. We caution you against making reference to private matters that may be before the courts.

Mr. Rosenitsch: Just to beg one indulgence, may I allot some of the time, if I have it available, to another gentleman in the audience? Is that permissible?

Mr. Chairman: Yes. Do you want that person to sit with you now? Is it part of your delegation?

Mr. Rosenitsch: No, it is not part of the delegation. It was a request based on if there were some time left over from the presentation. It was only conditional.

Mr. Chairman: Okay.

Mr. Rosenitsch: May I begin?

Mr. Chairman: Yes.

ONTARIO PUBLIC SERVICE EMPLOYEES UNION, LOCAL 311

Mr. Rosenitsch: Good morning, honourable members and ladies and gentlemen. I am here on behalf of the Ontario Public Service Employees Union, Local 311. I am here to represent them. I am a member of the Ontario Public Service Employees Union and I have been involved in the labour movement for close to 20 years, representing and being a delegate at the Canadian Labour Congress, the Ontario Federation of Labour and on other issues dealing with the labour movement.

The labour movement has a history of concerning itself with social issues such as medicare, pay equity, etc. Today, I am here before you looking

at the Children's Law Reform Act and the amendments proposed by the Attorney General (Mr. Scott).

I am here to give comment on various sections in the act itself. On page 1 of the brief—I hope you have it—the first issue I wish to deal with is subsection 24(2). In subsection 24(2), the act deals with determining the best interests of the child and what a court should consider. The recommendation here is to add the importance of maintaining emotional ties between the child and his or her grandparents.

The rationale behind this—by the way, this is an amendment proposed in Bill 45; it is also in Bill 45—is that the emotional ties between children and grandparents add a positive dimension to the children's sense of self-being and stability in the child's experience of love, emotion, wisdom and understanding from the older generation. The exposure of a child to the nurturance and traditions of grandparents gives the child a perspective of life and the world that would aid in adjusting to the parental separation and to life in general in this modern society.

In cases of separation, the grandparents still have a very important role to play: to add stability, to bring in aspects of family tradition. In determining the best interests, we feel the court should make that a specified consideration to reach its deliberations as to where the custody should go or how the custody should go.

To continue, under the same section, when we are looking at what the court should consider in determining the best interests of the child, we are suggesting the court should consider written documentation. As specified here in the brief, add:

"Written proposals and schedules detailing how the parent will facilitate:

"(i) the other parent's involvement in the major decision-making process for the child;

"(ii) the other parent's custodial or access time with the child."

Current psychological studies deal with the need for continuing involvement of both parents. If we look at how the courts operate, we have interim and interim and interim awards, and finally reach either a final agreement or a final judgement. It is in the interim awards where a lot of damage is done to the children in separating the parents from the child.

We feel that with a lot of the interim awards, the time and research necessary to properly determine the best interests of the child is not carried out in the crowded court situations we have. What happens is that the situation is set up where one parent is alienated to some degree. We feel that in that decision-making process a statement of facilitation of the other parent is relevant for the court to consider how to move on the access or custody issue. By having a parent state in writing how he or she foresees the environment for the children to be in the future separated process, this gives the court some insight into how to rule on various access and custodial issues.

For example, one of the parents may be involved in an occupation that means there is a lot of time away from the residential municipality, if you call it that, and consequently in that person's plan there may be an irregular schedule of time with the children. In other cases where two parents are both



involved in occupations, perhaps different shifts, different types of facilitation schedules could be presented.

We feel the court should have this available to them formally. Right now, it could be thrown up in a quickly put-together affidavit; it may not. Who knows what happens? This way, if it is there in the law, we have a case for a court considering what the future will be. Too often, our judgements, our rulings look at the immediate situations only. They do not look two years, three years, four years down the line. They look at the case of parents separating and a five-year-old or a seven-year-old or a three-year-old child, whatever the case may be. They do not consider that this child will become an eight-year-old and 10 and 12 and be a teenager. Circumstances change, but we rule on the present. We do not have this foresight and we feel the proposals will add a dimension to that.

Moving over to page 2. In subsections 24(3) and (4) proposed in Bill 124, I believe in section 2 of the bill, we have a special clause to deal with domestic violence. No one can condone domestic violence. When we look at the law, the way the law will be and stand for a number of years and a number of generations, here we have a special clause detailing one type of behaviour.

The question put forth is, what is meant by domestic violence? Does it mean a conviction for assault in a criminal court, or does it mean unproven allegations sworn in some affidavit? Is it a slap in the face? Is it a dish being thrown? Right now, if we look at affidavits sworn in interim awards, we see a lot of mud being slung. What is the definition of domestic violence? I feel our legislation will have to be clear in this case and not leave it open to the whim of any lawyer or any person to formulate a definition and to throw it up in this case. You have to be very careful.

#### 1020

Second, there are three little words in there that are very upsetting: the words "at any time." There are actions that happen at some times that are done and over with, but do not recur. Now these actions could be thrown up at a later date. Does this mean a person is tried twice for an action? Does it mean a person has to suffer more than once for some activity that went on, whatever that activity?

The third point to raise on this issue is, why single out domestic violence as a behaviour, as an activity, that we do not condone? However, there are other activities that we do not condone. We do not condone perjury. We do not condone fraud. We do not condone prostitution. We do not condone illegal possession of drugs. We do not condone alcoholism activities that break our laws. There is a list that goes on and on.

Now in the current legislation, we feel we have adequate protection for activities that are not condoned. Just give me a minute to reach it. We say here in the current legislation that the "past conduct of a person is not relevant to a determination of an application under this part in respect of custody of or access to a child unless the conduct is relevant to the ability of the person to act as a parent of a child." We feel that subsection 24(3), as it is currently legislated, serves justice more adequately than the proposed amendment, in the sense that it looks at the person's ability to act as a parent, not at what the action was. The court in its deliberations should determine the relevance of the conduct.

By naming one type of action, do we leave ourselves open to putting

other types of actions into the act also? Maybe we should have a special clause for other types of behaviour that we feel are not conducive to a person to act as a parent. We should be dealing with the person's ability to act as a parent, not what conduct has gone on in the past. The court should determine if that conduct is relevant to the action.

We feel that leaving in this clause about domestic violence "at any time," could do more harm than good. We feel it would increase the bitterness and the hatred between people. Someone can throw up an activity that is not related to his actions as a parent and use that against him. We know now that under the law it is relevant to bring it up if it has relevance. The courts should determine that, because every case is an individual case and should be dealt with that way.

Moving on, on page 2 at the bottom we deal with a new section we are proposing here to add to section 24. In Bill 95, we have two interesting clauses proposed by Dr. Henderson. One of them is that the attitude towards joint custody should not be relevant and a co-operative attitude should be considered.

It is possible in our province to obtain joint custody by agreement. Looking at the legislation it could even be ruled, judged. The allowable option of the court ordering joint custody in this day and age is a more viable option. As a child develops from the infant tender years through to the dynamic adolescent years, the critical nurturance required to ensure that the best interests of the child are maintained may fluctuate from parent to parent many times.

With a vision towards family life in the future, our legislation must recognize that an order of joint custody would be in the best interests of children in our modern society. Consequently, a co-operative attitude on behalf of the parents should be considered in the decision-making process. What we are saying here is that these two clauses that are in Bill 95 should be in the legislation.

The first clause states, "In a proceeding in which both parents of a child apply for custody, the preference of one or both parents to assume sole custody of the child is not relevant to the determination of the best interests of the child."

To go on to the second part, "In a proceeding in which both parents of a child apply for custody, and the court determines that joint custody is not in the best interests of the child, in granting sole custody of the child the court shall consider which parent has, among other factors, shown a greater willingness to facilitate access to the child by the other parent and to co-operate with and involve the other parent in the physical, mental and emotional wellbeing of the child."

These two clauses in Bill 95, I feel, are very strong. They suggest joint custody and they also suggest that a co-operative attitude should be considered in cases when there is no joint custody.

Moving on, we started a bit late. Do I still have---

Mr. Chairman: You have half an hour.

Mr. Rosenitsch: On page 3 of my brief, we look at section 35a proposed in Bill 124. What we are asking here is to add the words "or custody"

throughout the whole section. For instance, "A person in whose favour an order has been made for access or custody," and so on throughout the whole section. There could be an order for joint custody or there could be an agreement that the court orders be in place. Also, we must consider the fact that a person with custodial time may be denied that time, not just that a person with access time may be denied access.

To get specifically into section 35a, another aspect we wish to bring forward—page 4 of my brief—is that in section 35a, Bill 124 proposes that a mediation process could be ordered. We are suggesting that the mediation process that is currently outlined and suggested by Bill 124 does not have enough teeth.

First, the mediator, as currently proposed, is restricted by the parties as to the form and content of the mediation report. Mediators should be allowed to employ whatever skilful tools are necessary in order to carry out their duties and meet their objectives.

The proposals in Bill 45 give mediators the scope to be effective. In Bill 45, there is what I call an adverse inference provision; that is, if a person is not co-operating with the mediator, the mediator can determine an adverse inference opposed to his role, because if one is acting in the best interests of the child or children, one should be co-operating in the mediation process to bring about an option that will work. If one is not co-operating, that inference could be derived.

1030

Also, to have the parties sit down before the mediation to determine the form and content could turn mediation into something that is not effective at all. We feel that the mediator should have a free hand to determine the form and content, whether it be open mediation or closed mediation, what the report should be, and so on forth. Give mediators the power to work, to do their jobs, to bring about a settlement in a situation.

In this type of mediation, it is not a mediation between two parties. It is a mediation among three parties. The prime objective is the best interest of the child which may mean that the interests of the parents, in this case, may have to be restricted in some way.

In subsection 35a(4), we ask for an amendment as follows, which is on page 5 of my brief: "(4) A denial of custodial time or access time is wrongful unless it is justified by a legitimate reason verified by a law enforcement officer."

In this case, we say "a law enforcement officer" but we leave it to the committee or other people to come up with alternative sources of verification. We feel that the burden of proof of the denial should be placed upon the accuser, not the accused. In most of our judicial systems here in this country, the accuser has the burden of proof to put on the accused.

The other thing we wish to point out is that it may be proper for a noncustodial parent or a joint custodial parent to deny time to the other parent for legitimate reasons, just as it may be proper for a custodial parent to deny time to a noncustodial parent. For example, a noncustodial parent may be returning the children to a custodial parent who is strongly under the influence of alcohol and drugs. That may be a reason for a noncustodial parent to deny the access at that time; it is the other way around.



Second, we have a problem here with the denial not being verified. The reasons for denial are based on the responding party "believing" on reasonable grounds that there is a problem. This opens the door to a multitude of possible abuses by a bitter or deceitful person. The overexaggerated and petty incidents will be nipped in the bud by proper verification. "Believe" is a weasel word that can be interpreted in many ways. What are reasonable grounds? What is reasonable for one person may be extremely unreasonable for another. A third party verification helps to solve this dilemma and curbs abuse.

Let me go on now to look at these reasons. There are eight reasons proposed here and we are suggesting that a multitude of those reasons are petty and superfluous.

Mr. Chairman: I would like to say that you have eight minutes left, and there are four members of the committee who would like to ask questions. You can use all of the time for your presentation, if you like. I just wanted to let you know.

Mr. Rosenitsch: Sure. There are eight reasons. The first reason we deal with here under Bill 124 is that we feel that if the child suffers physical or emotional harm, the right of access could be denied.

The second reason is one that we cannot deal with. We cannot see this being enshrined in our laws. The second reason states that a party believes that the children may be harmed if custody is granted. We feel that this type of action is properly covered under the legal process as it is and should not be enshrined in the Children's Law Reform Act.

There are other legal processes and laws that protect individuals who fear they may suffer physical harm. We must not use the Children's Law Reform Act to address situations that are in the jurisdiction of other laws. This reason also allows children to be used as pawns in battles that they should not be exposed to: "I fear someone else; I deny someone access to the children."

The third reason deals with suspected alcohol or drug abuse, I believe, and we have no objection to that.

The fourth reason deals with tardiness, lateness, and we feel that this is too draconian. This is too petty. Here we have an act denying access; it has got to be for something serious. If someone is late, someone is punished. This reason is too draconian and is aimed to punish a person for tardiness. Lateness may not be within one's control. Even if lateness is controllable, denial of the time spent with one's children is too severe a punishment. The reason for denial would breed animosity and hatred and hence would be counterproductive to the intentions and spirit of the law. I am sure if a parent who has to wait for a tardy parent is really thinking of the best interests of the child, a bit of waiting for lateness could be there.

Reason five deals with illness and we feel that is adequately covered under reason one: if any physical or emotional harm to the children will result from illness. What we feel here is that the illness has to be of such a nature as to prevent the access of the other parent. What would be better for a child when he is not feeling well is to have the other parent around also to partake in part of the child rearing. Just to deny someone access because of illness that may be improperly defined—it may be anything from a sniffle to a broken arm—illnesses like this should not be reason enough to deny access.

Reason six is loaded with hidden agendas: if a person does not satisfy



the written conditions. What we feel is there is a proper mechanism under the law to get people to satisfy written conditions. Do not turn around and have one person be judge and jury and say: "You cannot have the children because you were supposed to do something with regard to access. You were supposed to make sure the child arrives in a four-seater car and you are showing up here in a truck," or whatever the story is. This is, we feel, is too petty.

Reason seven, again, we feel is too draconian. One parent is the judge to decide what is reasonable notice and what is a reasonable excuse. The door is opened for abuse and the seeds of animosity will be allowed to blossom. This reason, if it is ongoing, should be properly addressed in other areas of the act. If a person fails to exercise his right of access, it may be beyond his control.

It may be because of shift work or it may be that the person is transferred out of town. It may be the fact that in the first few years of the separation one parent has to engage in a lot of extra employment in order to make ends meet or to bring things together, and the right of access is not there. Finally, the person comes around to say: "Okay, let's start exercising this access," and the door is slammed in his face. If a person is failing to exercise the right of access, again there are proper procedures under the law.

Lastly, reason eight, if a person says he cannot make it he should not be denied it. Changes in circumstances—I am sure you can read it from the report here. By the way, there is one typo. It should be "it" instead of "is." Word processors do not check grammar. What we are saying here is that a list of reasons for denying access should be treated very seriously and the reasons should be serious.

On page 7, two concepts are tied together in subsection 35a(5) and 35a(6): the failure to exercise access and the failure to return a child. We feel those two should not be tied together in those subsections. They should be separate issues. I discussed failing to exercise the right earlier. We would like to add language to accommodate the refusal to return the child for legitimate reasons, as suggested in the previous section. In other words, the same reasons for denying access, the same reasons for refusing to return the child, should hold: if a child is in potential harm or if there is a case of drug or alcohol abuse. We feel it should work both ways.

The mediation process suggested in subsections 35a(5) and 35a(6) should be the same mediation process that we discussed earlier that forms part of Bill 45.

On subsection 35a(9), the issue of oral evidence: We take exception to the words "only oral." In this day and age, we have computers and word processors, and other forms of evidence should be justified, such as doctor's certification, if you want; breathalyser tests, if necessary to say, "I wasn't under the influence," and so on, things like this. Oral evidence in itself, I believe, could cause some problems, making the Children's Law Reform Act a little more draconian than the rest of the laws of this country.

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Subsection 31(10) on page 8 deals with financial hardship. Under the Family Law Reform Act we have a case where, under mediation, if one person is exposed to financial hardship, the other person may be ordered to assume the cost. Help people out who experience financial hardship, but do not penalize a person who is purely innocent and sincerely interested in the best interests of the child.

A person in financial straits could use this section as an economic weapon against another person who had good fortune. We feel that the current legislation, subsections 31(9) and 31(10), is quite adequate. I feel this is an attempt by the government to relieve itself of some additional expenditures, throw it on the parties in mediation and not assume the costs.

Last, we feel that the adding of the presumption of rebuttable joint custody and parenting agreements of Bill 95 would be welcome additions to the amendments at this time. Getting the parties to work together, even if you have to bribe them, would be far more beneficial to the children and to our legal system, rather than continue a process where one person is given powers over the other person in determining the best interests of the child. There is a page and a half there.

In conclusion, on behalf of Local 311 of the Ontario Public Service Employees Union, I wish to thank the committee for receiving this report. I hope I have adequately conveyed the thoughts of the local in this presentation. As trade unionists, we have a great interest in the future of the young people of our society and our senior citizens as well as the health and welfare of the working people, and the enactment of laws that are fair and equitable is one of our goals.

We feel that amendments proposed in this paper will provide an environment in which the children of separated homes would benefit because of the fair and equitable treatment advocated. The parents of the separated household should benefit in that they will be inclined to involve themselves in positive actions of co-operative child rearing. This would spill over into their working lives as well.

Lastly, our senior citizens and grandparents will have a role that is enshrined in our legislation. After all, we all turn into senior citizens some day. Thank you.

Mr. Chairman: Thank you very much, Mr. Rosenitsch. Unfortunately you have used up all of your time for your presentation, so committee members will have to ask their questions of you privately. Thank you for coming before the committee.

Ms. Poole: Mr. Chairman, on the occasion of several other witnesses we have extended the time. I know you do not wish to use that as a precedent, but could we extend it to allow each of the members you have on the list to ask a one-minute question? The presenter has made some very interesting statements in here that I would like to pursue.

Mr. Chairman: I used my judgement as chairman, and yesterday morning I allowed some latitude because I knew we had a half-hour leeway where we did not have a delegation.

Mr. Jackson: I support the chair, if I could, because I was very disappointed in the brief. If I get an opportunity to ask a question I am going to get quite angry, so it is probably best that we support the chair in the decision.

Ms. Poole: Are we not going to get the right to get angry?

Mr. Chairman: We have a very close schedule today and I do not feel we have the latitude.

Our next presentation is from Interval House, Hamilton-Wentworth. We

have three members of that organization with us: Margaret Corbett—it is different from the name on your agenda, so you may wish to note this—Gwen Davidson and Sharon Hafner. I am not sure who is who, so perhaps you could introduce yourselves.

#### INTERVAL HOUSE, HAMILTON-WENTWORTH

Ms. Corbett: I would like to thank you very much for this opportunity to speak to the standing committee regarding Bill 124. My name is Margaret Corbett and I am the president of Interval House, Hamilton-Wentworth. On my immediate left is Sharon Hafner; she is a court support advocate worker. Gwen Davidson is the executive director, and Gwen will be presenting our case today.

Mr. Chairman: Thank you and welcome to the committee. You have one half-hour to divide up as you see fit between presentation and questions. We would caution you against making reference to private matters which may be before the courts or appear before the courts in the near future.

Ms. Davidson: Good morning. In front of you I trust you have a grey package. In your grey package you have a number of items, but one of the items is your brief. It has a pink front and back. I would like to skip over the first page and go to page 2. The first page is introducing ourselves, but I think you are probably all very well aware of what a shelter is, so I will not go into that because of time constraints.

If we could start at page 2, I think maybe going through the brief would be a lot better than me starting to go on and on, which I have a tendency to do. Maybe that is easier for the committee. Start at "Bill 124, Our Concerns."

Legislators argue that laws like Bill 124 are written for the "normal" family separation and they further imply that separating families where violence is a factor are exceptions. In reality, the incidence of violence in Canadian families, however, is far too common.

Conservative figures indicate that one in eight women in Canada was a victim of domestic violence, a statistic which continues to shock us. The incidence of violence in separating couples, however, is much higher. According to a 1985 York University study, 46 per cent of separated and divorced women identify abuse as a factor in separation. That is almost one in two.

The violence does not stop at separation. You heard yesterday that in Canada, 44 per cent of separated women experience at least one incidence of violence after separation. We know most custody and access agreements after separation are made amicably and that those which are contested are situations where there is continuing hostility in the relationship.

The percentage of family court actions in which domestic violence is a factor, then, would logically be considerably higher than the one-in-eight statistic on violence in relationships or the one-in-two statistic of abuse in total separations. In short, we would suggest that violence and abuse cannot be considered an exceptional case within situations covered by this legislation and that a very large percentage, if not a majority of the cases which this bill addresses, will involve violence, intimidation and abuse of some kind against a female partner in the family.

It is, therefore, imperative that the needs of abused women and their



children be the first priority in the writing of any family or children's law and that ensuring their safety be paramount in its execution in the courts. Unfortunately, like much of our current family and children's legislation, Bill 124 contains little that will protect the lives and wellbeing of abused women and their children.

In order of the written sections of the bill, we have the following concerns:

Subsection 20(4a), duty of separated parents: The writers of this bill have not submitted any evidence we are aware of to support the assumption in this clause that it is always in the best interests of the child to continue a relationship with both parents. We do know, however, that some forms of parenting are damaging and abusive to children. One of these is direct physical and emotional abuse of a child, including sexual abuse. Our laws recognize this and withdraw parental rights in such cases.

Experts in the field of domestic violence now recognize that witnessing violence also results in the same damage to children as direct physical and emotional abuse and that, in addition, male children who witness such abuse are at a high risk of perpetuating the violence in their adult lives.

You have learned from other presenters of the work of Dr. Peter Jaffe. For your information, we have included some information on his work in your packages. Of interest also is research published by Straus, Gelles and Steinmetz in their book *Behind Closed Doors*, which shows that male children who are raised in violent homes are 1,000 times more likely to use force to solve their problems than peers raised in nonviolent settings. This horrifying statistic was liberally quoted by the Honourable John Sweeney, Minister of Community and Social Services, some years ago when he and Attorney General Ian Scott provided the press with research to support government initiatives supporting shelter programs for child witnesses of wife assault in Ontario.

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We would support the views of other presenters here, therefore, that encouraging and supporting a continuing relationship with a violent parent would not be in the best interest of the child and that this clause negates subsection 24(3) of the bill requiring consideration of domestic violence in determining parenting ability.

What impact does a duty clause have on an abused woman and her children? The abused woman finds herself in a trap. If she is really to address the best interests of her children, she should fight easy access to violent parenting. In doing so, however, she feels a very real possibility that she will be seen as a vindictive woman who wants to prevent her children from seeing their father. In such a case, she may very well lose custody or find access to the violent partner increased rather than restricted.

You have been told how abusive men are more likely to also abuse their children directly. Both mother and children are helpless to stop the violence. In many cases, children who see their mothers as helpless will hide abuse against them because there is no one to tell who will help. After both mother and child have escaped the violence and are safe, however, children may reveal the secret of both physical and sexual abuse against them.

The duty clause effectively traps a woman in a situation where revealing the abuse against her children makes her look vindictive. Many women and



children in fact have been accused of fabricating the abuse to prevent custody or access by the father in spite of continuing evidence that children very rarely make up such stories. Like revealing her own abuse, disclosing child abuse to protect your children may result in custody and access being awarded to the very abuser they fear. How is this in the best interests of the child?

For abused women, separation often means the onset of physical assault or increased incidents of violence as the violent partner finds he is losing control of his victims. It is at such a time when violence and threat of violence are most pronounced, then, that abused women are required by this clause to encourage and support a child-parent relationship which ensures access by the assailant to both women and children. Such a requirement is surely unreasonable and inappropriate in legislation meant to support children and positive family life.

Subsection 24(2), best interests of the child: There are a number of problems for abused women and their children in this section as well.

Clause 24(2)(b), ascertaining the wishes of the child: We have found that official guardians assigned to find out the children's preferences often do not have training in the effects of witnessing violence on children. We have also found that in many cases professionals other than official guardians are also lacking in education on the issues of domestic violence and incorrectly assume that the family can work things out if supporting professionals insist on it. The wishes of younger children are often dismissed out of hand with the explanation that such young children cannot make judgements about their needs. Their fears of violent fathers are, therefore, largely ignored and their safety betrayed.

Clauses 24(2)(c) and (g) and clause 24(2)(e), stable environment and consideration of financial constraints: We concur with the numerous other presenters who have stated their objections to the continuing discrimination against women inherent in comparisons of women's relatively low economic standard with that of their more economically privileged partners.

Subsection 24(3), domestic violence to be considered: We are pleased that some form of consideration for violence has been included in this bill with regard to parenting. However, we fear that only physical violence convictions in criminal court may be used as evidence, when most of the women we see fear any disclosure of their abuse because of physical retaliation, threats and other psychological violence by their partners.

We, unfortunately, find that many judges are ill-informed on the issue of domestic violence against women and its effect on children. Many of them, even today, hold abused women to blame for violence and are unaware that violent men remain violent even when their victim is removed. Often, they conclude wrongly that as long as the couple is separated, the violent man is cured and his parenting ability unaffected by his violence.

While judges in this province are still telling abused women they are tired of them or putting women victims in handcuffs until they sign peace bonds with abusive partners, we are a long way from the day when we can simply tell judges to consider domestic violence and relax, knowing they will have the ability to do that intelligently and with compassion.

We have included only a few press clippings in your packages to support concerns in this regard. Most of these incidents never reach the press, however.

Clauses 35a(2)(b) and 35a(6)(a), supervised access: We support supervised access for women who wish to encourage access, as long as the safety of her and her children can be assured. But we also know that only one small supervision service exists in our area and we are aware that such services are generally not available to families in other communities in this province. How can judges adequately order supervision when they have no services available to carry out the order? How long is supervision required? Will services be able to provide this indefinitely for men who refuse to receive counselling for abusive behaviour, for example?

We very much doubt government will be willing to adequately fund such services for women and children. We suggest there is little point in making supervision an option on paper when in reality no such option exists for families in this province.

Clauses 35a(2)(d) and 35a(6)(c), mediation: We strongly oppose any-- and I will emphasize "any"--legislation which does not provide exclusionary clauses for abused women with regard to mediation or any process which blocks women's direct access to court.

Mediation is never an appropriate option for abused women. Contrary to wishful thinking, conciliatory processes do not facilitate a lessening of conflict within relationships where women are abused. Indeed, quite the opposite appears true. For example, a 1985 preliminary study by LaMarsh Research Program on Violence and Conflict Resolution at York University found that, in a comparison of violence after separation, 57 per cent of women who used conciliatory processes suffered further abuse compared to only 35 per cent of women who used an adversarial approach.

Mediation works only if both partners feel able to express feelings, needs and wishes with equal force. In relationships where women have been controlled and abused by their partners this is impossible, particularly in situations where women fear the loss of their children to a violent spouse as well as the continuing fear of physical retaliation against themselves.

Because mediation is a cheaper alternative than court, lawyers, judges and other professionals are tempted to suggest such options for abused women. Women themselves may feel compelled to choose such an inappropriate option because they are poor and cannot afford costly court action.

The women we see are also inclined to comply with such suggestions against their best interests because they want to be a friendly parent in order to ensure continued custody of their children. This puts them in danger not only of agreeing to settlements which discriminate against them but in very real physical danger after mediation sessions end. Mediators in our own area have told us stories of having to cut mediation sessions short because they feared male partners were literally about to attack their wives.

Besides our concern for the safety of women in mediation, we are concerned that mediators, like many other professionals, are not trained in issues of domestic violence nor are there standards determining what qualifications are needed to be a mediator. Some mediators in our city claim that they do not mediate in cases where one of the partners has been violent, yet they have admitted being unable to identify violence in the relationship before mediation begins and recognize it only during sessions when the male partner becomes abusive. In short, mediators are intervening in violent relationships without knowing or realizing the damage being done. This is not in the best interests of the woman, the children or the legal process.

Subsection 35a(4), denial of access: Other groups and indeed the Attorney General's representatives here have identified the problem of lack of evidence that access denial is a problem in Ontario, and we concur with those who say that the justification for introducing this remedy has not been supported. It might be helpful to this committee to know that research undertaken for the Attorney General's office in Manitoba in 1986, when that province was considering similar legislation, showed that only 15 per cent of access parents surveyed indicate they have difficulties with access—any kind of access, not just denial; 15 per cent. While we do not feel access-denial remedies are needed, if we are to have them anyway, we would support a provision for abused women to deny access as a result of fear of wife assault.

#### 1100

We are shocked, however, that children themselves are not given the right to make choices about ongoing or particular access visits within the list of legitimate denial reasons. We strongly support the rights of children to have a say about access visits, regardless of court orders and provisions.

Subsection 35a(7), speedy hearings: While we applaud attempts to speed up the court process, we feel this provision will not succeed in that goal. Because 10 days is such a short period to allow for preparation of any court matter, including the hiring of a lawyer, we feel women will have to go to court unrepresented. This would be disastrous for battered women.

Subsection 35a(9), oral evidence only: For many abused women, this clause means another frightening confrontation with the man who has beaten and abused her. In such situations, abused women often find it extremely difficult to disclose information which they will pay for later when no one is around to protect them. Indeed, we have had residents of our shelter placed in rooms at court with their assailants alone. These actions are sometimes meant to leave partners alone in the hope they might work things out. Such an attitude clearly shows a shocking lack of understanding of domestic violence and often criminally endangers women's lives. This has happened not only in family court in Hamilton, but at criminal court where charges of assault were about to be heard against the man. It is essential that women in all cases be allowed the opportunity of providing information not only orally but through a written affidavit.

At this point, I would like to skip over the summary—if you want to read it later, I would really trust that you do that; it is just a summary of the points in a very abbreviated fashion—and go on to page 13 which includes the recommendations:

1. Since relief on access—order breakdown currently exists, section 35a of this bill should be deleted.
2. The duty clause should be deleted or amended to exclude women and children who are the victims of emotional, physical or sexual abuse.
3. Judges should be required to take education on all of the issues relevant to the needs of women and children, including issues of violence, poverty, homelessness and economic discrimination.
4. Official guardians and other professionals assessing the needs and wishes of children should be required to take education on the issues of violence against women and the effects of witnessing violence on children.



5. Services to provide supervised access should be funded and set up by the province to adequately meet the need.

6. Mediation clauses in all provincial family and children's law legislation should be amended to include exceptions for abused women.

7. All mediation services should be regulated and standards of mediation set by government to ensure mediators do not intervene in relationships where there is an imbalance of power between mediating parties.

8. Subsection 35a(4) on denial of access should be amended to include the wishes of the child.

9. Subsection 35a(9) should be amended to allow written affidavits in addition to and/or instead of oral evidence.

Now we would like to present to you, acknowledging the time we have, some case histories. The names have been changed to protect their identity; however, this is reality. I would just like to have you listen to them very carefully.

Mr. Chairman: You have about eight minutes.

Ms. Corbett: This is the case of Tamara, and it is dealing with the friendly parent.

Tamara is the mother of three small children between the ages of one and five; one boy and two girls. She sought shelter with us for a number of weeks because of physical, sexual and emotional abuse. Among other things, she has been raped, thrown down stairs, thrown against the walls and furniture. She has been cut with glass, punched repeatedly and had her hands slammed in doors. Her husband, Mike, the father of the children, has repeatedly destroyed household furniture and has thrown objects to terrorize the family. He has threatened Tamara's life on a number of occasions and promised that if he cannot have her, no one will.

Mike is very proud of his son, but is extremely abusive to both his daughters. He regularly hits them for such behaviour as not being toilet trained, waking up in the middle of the night and being fussy eaters. Such blows often result in the girls falling and hitting other objects and furniture. These incidents happen on an average of approximately three times a day. Many of these beatings resulted in severe bruising and cuts which required stitches and left permanent scars. As well as physical blows, the girls suffer constant belittling. Mike frequently calls them "stupid," "ugly," and "bitch," as well as other names which we hesitate to print here.

Although there were good grounds for a no-access order, the judge, after reading the affidavit material, ordered that it be sent to child welfare authorities. Tamara's lawyer suggested that Tamara put into the affidavit that the children still loved their father and would like to see him. The lawyer felt that such a statement would make the mother appear more reasonable and that the bald statement of abuse might look like Tamara wanted to cut all contact between the father and the children, the assumption being that this would appear to be without just cause. He felt that including the positive statement about the father, although none was warranted, would ensure the court saw Tamara as a friendly parent.

Ms. Hafner: I would like to present the case of Wanita, which illustrates some of our concerns about mediation.



Wanita has two boys, aged seven and three. She sought shelter at Interval House because she had decided to leave her abusive husband, Marty, and had no place to go. Wanita had suffered frequent physical assaults from her husband—punching, kicking and slapping—whenever he was in a bad mood. He had also threatened to beat her repeatedly while she was pregnant. She could not anticipate the violence because sometimes he would fly into a rage without warning. Between violent incidents, he continually called her names and insulted her. She was particularly hurt when he would tell the children that she was a bad mother and that they did not have to listen to anything she said. Wanita came to the shelter, she said, because Marty had sole access to their finances and she had no money.

The judge in the case suggested that Wanita and Marty should go to mediation. Both lawyers and the official guardian in the case agreed with this recommendation. Wanita had gone through years of abuse with her husband, was afraid of him and did not want to seek mediation. She told us, however, that she felt that to be the only one opposing mediation would make her look unco-operative and she was afraid that Marty would get custody of the children.

To protect herself and have some independent input, Wanita agreed to a first meeting alone with the mediator in the hopes of explaining her fear and persuading the mediator to support her in referring the case back to the court. She told the mediator about the history of abuse and gave her sworn affidavits to the mediator. The Interval House court advocate also informed the mediator of the abuse history. In spite of the woman's fears, the mediator agreed to take the case.

During the mediation sessions, Wanita began to feel harassed, badgered and threatened by her husband. At one point during the mediation, the husband said he had called children's aid on Wanita's baby-sitter. When checked out, this turned out to be a falsehood told to make the mediator think Wanita was leaving her children in the care of unsuitable care givers. The mediator said the children's aid society would work this out, even though they had not been called, and did not see any reason mediation could not continue.

Wanita began to give in to Marty on custody and access issues in mediation because she hoped that giving in would result in Marty giving also. This, of course, did not happen. Eventually, Wanita told us she was feeling that she should just agree with anything to get it over with because she could not take any more. When we appealed to the official guardian about the situation, he said that he felt Wanita was strong enough to go through mediation and he was not prepared to get further involved.

Ms. Davidson: We have one further case history that, because of time constraints, maybe you would read. I would really like to emphasize here that I have been involved in this field as a social worker for the last 12 years, primarily in this field in indirect and direct services.

This is the only crime in Canada that I am aware of where you are legislating that the victim must continue a relationship with the perpetrator. Nonviolent men have nothing to fear; violent men may have something to fear in being denied access, and so they should. I have ex-clients who are dead, who were murdered by their partners. I would ask the committee to bear that in mind.

Mr. Chairman: Thank you very much. We have four members who

indicated they would like to ask questions. Just to give you an idea, you have about three minutes.

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Ms. Poole: I am going to pursue an area with you that I had hoped to talk about with Mr. Rosenitsch, our previous witness. He made some quite startling comments about domestic abuse. I am wondering how many of his OPSEU female members he pursued this with before making the brief. That is an aside.

I believe we have finally come to the stage in our society where domestic violence is no longer acceptable and cannot and will not be condoned. However, as you have stated in your brief, I do not think our courts, to be charitable, have kept pace with society's attitudes in this regard.

I feel the direction in subsection 24(3) is very necessary. Mr. Rosenitsch asked the question, "Why single out domestic violence?" I know the answer to that question but I would like you to tell Mr. Rosenitsch why we are singling out domestic violence.

Ms. Davidson: First of all, the government has already said domestic violence is a crime, and it is a crime. We, as parents—I have a 21-year-old daughter—are role models for our children. Domestic violence: Is that a role model for what we want our children to be? It is as simple as that.

Mr. Jackson: I, too, was disturbed with the previous presentation and the approach that was taken in terms of putting parents on a level field without adequately addressing the risks associated for children. I want to thank you for your reference in your brief to life at risk. It is a point that is not being driven home properly in these hearings and so I appreciate your having put that in perspective.

You divide violence into emotional, physical or sexual abuse. Again, I want to thank you for making that distinction. However, if we are to consider amendments in that area, it is going to be very difficult because of the amount of research available on the issue of emotional abuse. Now I will get to my question.

Mr. Chairman: Please.

Mr. Jackson: One of your recommendations is for subsection 35a(4), that denial should include the wishes of the child. I certainly applaud and support that, but do you not consider it a structural flaw in this bill when it says that the issue of a person's ability to act as a parent has more weight in the way the bill is structured than does the issue of the protection and the best interests of the child? Should we not have had a recommendation more in that area as well to augment your recommendation?

I still see a problem in the courts where the judge can look at section 35a and say, "Yes, a child's right to deny exists," but in section 24, he is told that he should do everything possible to ensure both parents have access to that child. Where is the judge to come to on that issue? That is why I am challenging you to perhaps suggest a further amendment to this bill.

Ms. Davidson: Recognizing that this government is probably committed, as was mentioned yesterday, to implementing this bill or some form of it—frankly, in my opinion, there should be no access, period, but if a bill goes through, then they must take into consideration that they should ask

the child at that point. If we could have whatever we wished for, it would be no access because of the message it gives the children. I have seen thousands of women, and the father getting access to or even custody of the child has given the child a very clear message that there was nothing wrong with what father did.

Mr. Jackson: The court said it was okay to go back.

Ms. Davidson: That is correct.

Mr. Chairman: Our time has expired.

Mr. Reville: Come on, Mr. Chairman. I submit to you that while you have to keep on schedule, you also have to be aware that there are some politics in this. We have had one of each flavour and there is one more flavour to hear from yet.

Mr. R. F. Johnston: Three scoops.

Mr. Chairman: Your point is noted. I have been, throughout the four days—

Mr. Reville: I was not self-indulgent—

Mr. R. F. Johnston: Do not waste time arguing.

Mr. Reville: —talking about the previous deputation either, because of course I have not talked yet. But I promise I will not mention the previous one if you will let me talk now.

Mr. Jackson: That would have been one heck of a scoop.

Ms. Poole: It is reasonable that we have one question from the New Democratic Party.

Mr. R. F. Johnston: I suggest to you that I do not want see a precedent where you cut off a member from one party. Right at this moment, to save some time, I suggest you hear a short question from my colleague. It is a bad precedent you are about to set. If you want the rest of the time to fall apart, it will fall apart. I suggest you move very quickly on this.

Mr. Chairman: There were occasions on previous days where people from other parties were cut off. I have been following the practice of making a list, to the best of my ability, in the order in which I see the hands. I have been following that practice.

Mr. Reville: Costly ruling.

Mr. Chairman: If I start to vary from that now, I will be inconsistent with what I have been doing the three-plus days we have been here.

Mr. R. F. Johnston: I do not think anybody was aware you were doing that, not allowing a representative from an individual party to be heard. If I had known that, I would have suggested you then hear at least one from each party if there were going to be questions, if they wished to be heard. You cannot do it in any other way. We happen to be in a tripartite system in this province.

Mr. Carrothers: Having been cut off, I would simply—

Mr. R. F. Johnston: You should have complained. I would have supported you, and I will in your next attempt.

Mr. Carrothers: It might have been a first in history.

Mrs. Cunningham: Were you cut off?

Ms. Poole: He was cut off twice.

Mr. Reville: I really liked your presentation, even though I am not allowed to say that.

Ms. Davidson: Thank you very kindly.

Mrs. Cunningham: I go ahead anyway. I guess I have been cut off.

Mr. Chairman: I have been attempting to run things fairly. I have been following the rules of procedure that indicate, "Although the succession of the speakers is left entirely to the chairman, it has been customary for the chairman to recognize members in the order in which they sought to be recognized."

Mr. Reville: There are those other considerations that I invite you to consider.

Mr. R. F. Johnston: On a point of order, Mr. Chairman: As someone who has sat in that chair over the years, I suggest to you that although those are there as a guide to you, there is also a commonsense notion about how to deal with the parties. I just advise you that I think it would be wise for the rest of the day that if all three parties want to be heard, they should be heard quickly. Cut us all off after one question. That is great.

Mr. Chairman: I have also been keeping records of the number of people, and it has been a pretty fair balance.

Mr. R. F. Johnston: I do not doubt that at all. I am just suggesting that for the rest of the day, if Mr. Carrothers wants to be heard, if no other Liberal has been heard, you hear Mr. Carrothers.

Mr. Carrothers: I will have to make sure my questions are on before yours, Mr. Johnston.

Mr. Reville: Just put your hand up right now.

Mr. R. F. Johnston: Dianne Poole was on before they even started in the last presentation.

Mr. Chairman: I will continue chairing in as fair a manner as I know how.

Mr. Daigeler: Good.

Mr. Chairman: Our next delegation is Bob Potomski. Before we hear from him, I would like to thank the previous delegation for coming and sharing with us its expertise.



Mr. Potomski, you have 15 minutes for your presentation. You may leave time for questions if you wish.

BOB POTOMSKI

Mr. Potomski: Thank you. My name is Bob Potomski. I was separated in October 1983. At the time of separation, I had two daughters, one six and one three.

So that you will understand where I am coming from, I will tell you how I originally started. I was a workaholic. I came home from work one day and my wife at the time had left. I found out subsequently that she ended up going to a house for battered women. That really bothered me because I did not feel she was a battered woman. I did not feel I abused her. Emotionally, I was a caring person, and I was worried about that.

I found out eventually, a couple of years later, that she went there in order to gain custody of the children, and she did. She really threw one into me emotionally because of this. We went on to a real bitter fight. I have also been charged with abduction of my two children. I have subsequently---

Mr. Chairman: I refrained to give you the usual caution at the beginning, which is to stay away from matters that may be before the court.

Mr. Potomski: They are not.

Mr. Chairman: Okay.

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Mr. Potomski: I have been charged with abduction of my two children; actually, of one. I had the child for nine hours and I could not find her during that time, but because of, at the time, a lot of publicity and all that, I was charged and I later plead guilty.

In 1984, I had over 50 court appearances. I went from driving a Mercedes-Benz to having to borrow a car to go someplace because I had to pay all my legal fees. In 1985, I got sole custody of my two young daughters. Your bill that you are presenting would not allow me to get custody of my daughters because of the violence. There is no violence in our relationship, but because it was brought out in that way, I probably would have, excuse the language, a hell of a time trying to get where I am today.

I look at this bill and I have some questions. Do I need, as a custodial parent, any more rights, any more authority? No, I do not. If their mother does not bring the child back, I can call the police and have her charged with abduction. She could get thrown in jail. With that threat, she is definitely going to bring the child back.

I have worn two hats on this. I have been a custodial and a noncustodial parent. My children's mother is a very good mother, but I had a problem with access. That is why I spent a lot of money. Unlike a custodial parent, government does not fund rights to access. If I have a problem with my custody, all I have to do is make a phone call. The Ontario government will run down, hire a lawyer and get the kids. As a noncustodial parent, you cannot do that. You can write all these things, but who can afford it?

You asked some men, I heard earlier, "Do you have any problems with

access?" Some of them just got fed up. They cannot afford it. What are you going to do, go bankrupt? I came close. She had a lot of support groups. The government does not fund anything for men or children. There are three groups here and the only ones that are getting a lot of government funding to pay for somebody to come out and speak are the women's groups. We do not have a men's directorate or a children's directorate.

I listened to the previous group. I did not even hear about the children. I have talked to some women I know who have had situations where there is violence and they have made it very clear that the violence is between spouses, not between children and spouses.

I will tell you what I did. Unlike in some other provinces, you cannot get a custodial parent convicted of abduction in this province, not because the courts will not allow it but because the Attorney General (Mr. Scott) has made it clear that he will not proceed against a custodial parent. I had my estranged wife charged with three counts of abduction. I had not seen my kids for months, even though I had a court order. I went through the contempt procedures and all that. It did nothing.

We went through the whole court procedure and we finally came down ready to set a date for trial. It was at that last point that I heard something, that the Attorney General was not going to proceed. I called Toronto, I checked things out and I was told, "That's life."

I did some homework. I called other provinces' offices of the attorney general. In fact, I even checked some case law. The abduction section of the Criminal Code can be used against a custodial parent, but in our courts the crown attorney has the last say. The crown attorney got up and said, "We are not willing to proceed." There were 10 police officers who were going to be called as witnesses as to the abduction, the denying of the right to that child. This crown attorney, on instructions from Toronto, said no.

I subsequently filed a complaint to the Ontario Human Rights Commission. I was told by their legal department that, at first, they were just going to send me a form letter saying "Thank you," but they saw some merit in my complaint. I waited a while. They asked for more information; I gave it to them. Then I was told by their legal department that they were going to proceed against the Attorney General. Then what happened was that person got transferred and they cannot find the file. Men are a disadvantaged group. We cannot get anything.

I do not have a lot of time to sit down and go point by point, but I will tell you that if you can come up with a bill that gives custody and access equally, go ahead and deny the bickering. If you really look at your bill, it almost looks like a make-work program for lawyers.

You are going ahead and you are saying that whoever has the child should keep the child. You are putting more strength in your bill on the status quo. But like most men, I worked, and she worked sometimes. I would bring home the bacon; she watched the kids and she pushed me out the door. We were equals, but we had different jobs. So when we had the initial breakup, right away: "Hey, I guess you should have the kids. I will continue working and I will just see them."

You are putting too much strength in that. What happens when the woman starts working and she has to bring home the bacon? Things will change in her relationship with the children. In your bill you are saying, "Go back to the

past." You are putting more strength in that. The present and future are where you should be going.

I think the relationship between the child and the parent should be foremost, not this thing about wherever the battered wife goes, the child should go. I do not believe in that.

I guess that is it, basically. I can go into detail on the bill, but I do not have the time. Are there any questions?

Mrs. Cunningham: Yes, I have a couple of questions, given your experience. One of the objectives of this bill, as presented by the Liberal government, is to provide a speedy and inexpensive means by which access difficulties can be determined by the court, including guidelines for the determination of a wrongful denial of access. You have had a lot of experience. You have read the bill, I take it, and understand it.

Mr. Potomski: Yes.

Mrs. Cunningham: Will it provide a speedy and inexpensive means?

Mr. Potomski: I do not think it is going to do much more than what is already there. From experience in talking to quite a few men throughout the province, I have learned that there is an evolution through a marriage breakup. The first order should be, and I believe it should be, just work it out between you, and then eventually, get into specified times.

That, to me, is probably a way of doing it. It would probably be a lot easier if there were no order for custody, because that is where the pressures are. When you are a noncustodial parent, you are a visitor. Maybe joint custody is the first thing to go to, or no custody. Do we have a custody order when both parents are living together? Not really.

What is wrong with having a no-custody order or joint custody and a principal residence, so that one person has a little leverage so there is no complaint? The other thing is that when you are denied access, there is section 37 of the act that you can direct a police officer—without notice it can be brought before a judge—to take the child, go in and take the child, or the person himself go in and take the child.

I really think a quick motion—that would be like: denied access tonight, tomorrow morning in court, have the police go, take the child; that is quick. It is a lot quicker than anything in here. I do not think this is quicker. That is how I will answer that.

Mrs. Cunningham: So you are saying the enforcement tools that are in place now are other than jail sentences and fines.

Mr. Potomski: I guess contempt of court can be a jail sentence.

Mrs. Cunningham: Or a fine.

Mr. Potomski: Or a fine.

Mrs. Cunningham: But you are saying it did not go that far in your case.

Mr. Potomski: In my case?

Mrs. Cunningham: Yes. You were not put in jail.

Mr. Potomski: Yes, I was. I was held in jail until they got the papers. I was not, no. I was placed on probation for two years.

Mrs. Cunningham: What about fines? Were you ever fined?

Mr. Potomski: No, I was not fined anything. I was a noncustodial parent when that happened.

Mrs. Cunningham: Right. That is what this is basically aimed at, to help a noncustodial parent. What tool did you use for access when you were denied it?

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Mr. Potomski: I did what probably most women do. I went ahead, asked around and set her up in order for me to get custody. She moved into a place that was denying me access—my in-laws. There is case law on the books. If the custodial parent moves in with her parents or his parents and—

Mr. Chairman: I am getting somewhat uncomfortable at the direction in which your comments are moving.

Mr. Jackson: If he is not uncomfortable—

Mrs. Cunningham: I was not setting anybody up. I was not aware of the answers at all. I just wondered what people do (inaudible), and we are finding out, whether we like it or not.

Mr. Potomski: I will tell you how I can prevent my children's mother from seeing her kids under your bill. I know her. Like a lot of other spouses, they know the other spouse. I can push the right buttons, make her slap me on the face and then go down and lay an assault charge. Does this not help me in denying her access?

Mrs. Cunningham: So you are saying in spite of those guidelines, these things will happen, people will probably use them because they are in print? That was my fear in the very beginning. I thought they were pretty good ideas, and that is what we are basically hearing from people coming before the committee.

Mr. Potomski: I think people can be set up and I think there are a lot of loopholes in here. You cannot tell. I am worried about that. I could stop my children's mother from seeing the kids just by that, from what I see in the bill.

Mrs. Cunningham: So paper does not help sometimes, does it?

Mr. Potomski: No. If anything, I think it hurts the kids.

Mrs. Cunningham: I am glad you mentioned that last word.

Mr. Chairman: Thank you for coming and sharing your views. I am sure it must have been difficult for you to come to this public forum.



Members of the committee, I regret to report to you that there was a little bit of a mixup in the clerk's office. There were two different people doing scheduling and, as a result, unknown to me and unknown to the committee, two people were given the 11 o'clock slot. So we are now not only 15 minutes behind, we are half an hour behind, because we will have to hear from the other 11 o'clock person before we go to the 11:15 spot, since the commitment was made to both.

We will now call Barbara Chisholm forward. You have 15 minutes for your presentation to divide as you see fit between presentation and questions.

Ms. Chisholm: I appreciate your courtesy in including us, even though there had been a mixup.

Mr. Chairman: It will make it even tighter, but the commitment was given to you, so we will honour it.

BARBARA CHISHOLM  
CARISSE GAFNI  
RACHELE DABRAIO

Ms. Chisholm: You have been given a copy of our brief, and the curriculum vitae of each of us is attached. I would like to introduce myself. I am Barbara Chisholm. On my right is my partner, Carisse Gafni, and on my left is Rachele Dabraio. We are all social workers. Carisse and I are in private practice as child and family consultants with a particular specialty in separations and divorces that affect children and families. Rachele, from whom you heard yesterday, is the executive director of a supervised access program in Toronto.

We appreciate that the intent behind the proposed amendments is to ensure compliance with court-ordered access arrangements between noncustodial parents and their children. Noncompliance is or can become upsetting behaviour. If repeated, it may exacerbate still-hurt or angry feelings and expose a fragile agreement to the strain of further quarrelling and possibly manipulative behaviour on the part of one or both parents.

Such developments worsen rather than improve relationships between the adults, and the children may be caught again in the cross-fire. Curtailment of such situations is a worthwhile goal and can be seen as laudable public policy, to say nothing of its obvious advantage for the parties and the children concerned.

The temptation to try to manage such noncompliance within the legal process is also understandable. The original context was legal—the making of the custody and access order—and therefore it appears at first glance perhaps that the remedy for a breach should be structured within that process also. No court looks lightly, presumably, on having its orders ignored. Having had the court's authority function once before, it appears logical to turn to that authority again when a problem of noncompliance arises.

The anticipated use of the court to seek a remedy seems to be based on certain assumptions:

1. That the issue is exactly and only that of noncompliance with court-ordered access.

2. That the noncompliance is at the instigation of the other parent.
3. That the noncompliant behaviour can be addressed and dealt with in a vacuum without regard to its larger context.
4. That the background of the matter has no relevance to the complaining party's current grievance.
5. That quick resort to legal action is not only feasible, it is wise.
6. That ordering compliance will ensure compliance and that punishing noncompliance will ensure future compliance.

In other words, to oversimplify the matter, if one party runs to tell on the other one and the adult in charge, the court, orders everyone to "Stop quarrelling and do what I told you to do," then by virtue of that parental order everyone will indeed stop quarrelling, start co-operating and do as they have been told or ordered.

Just as every parent of more than one child knows that this outcome, even if achieved, will only be temporary, providing peace until the next time, we submit that the remedy sought in Bill 124 will have no better result. Indeed, it is our concern and conviction that if applied as now proposed, it will have precisely the opposite effect to that intended: it will make things worse.

It is our considered opinion that the proposed amendments, if implemented, will have the following consequences:

1. An increase in litigation, since that will be seen as the encouraged mechanism.
2. An increase in ill will between the separated or divorced parents as power is resorted to first to address an issue rather than as a last resort.
3. A serious reduction in parental willingness to talk and to negotiate not only this matter but subsequent ones that arise.
4. A depersonalizing of children who become, quite literally, objects in the situation as their rights and interests are peripheral to the dispute.
5. A sense of helplessness on the part of one parent if there is not proper time allowed to prepare an answer.
6. An increasing perception of unfairness on the part of the legal system, both legislative and judicial, since only verbal evidence can be accepted and affidavits prepared only with leave, and a frightened or intimidated party may not be able to handle anxiety well on the witness stand.
7. A potential sense of the misuse of the court, risking placing both the law and the court in disrespect, because the court is seen as a too ready, too available, unfair ally of a disaffected party.
8. A resorting to power politics tactics between former spouses who are angry with one another rather than a recognition of the value of cool-off time and the merits of negotiation rather than litigation as the first procedure of choice.

9. A delay or interruption in healing for both parents and for the children which, in turn, will keep old quarrels alive, entrench bitterness and upset and perhaps eventually alienate the children. Obtaining access at such cost is, in our opinion, at best a Pyrrhic victory.

We would like to address specific points of concern in the proposed amendments:

Subsection 24(3), consideration of past violence: This is a welcome amendment, but how can it be of use in a hearing where, unless specifically authorized to the contrary, only viva voce evidence will be allowed? What tests will be available to overcome denial, especially if the violence has occurred subsequent to the original order?

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Section 28a, the power to specify days and times of access or varying such: Courts should be encouraged to spell out the specifics of access in all orders unless the court is truly satisfied that the parties are amiable enough and mature enough to undertake the "reasonable access on reasonable notice" context.

Subsection 35a(1), the motion to enforce the right of access would have to be made to the court that made the access order: Why must the parent return to the court that made the original order? The present motion may be being brought some time later, with either or both parents no longer residing in that original jurisdiction. Other proceedings in custody and access matters are heard where the child resides. Why should this differ?

Clause 35a(2)(b), the court may require supervision as described in section 35: The present section 35 empowers the court to "give such directions as it considers appropriate for the supervision...by a person, a children's aid society or other body." But there is no provision here or in the proposed amendment for how this is to be implemented, how it is to be arranged and paid for, what period and length of time the arrangement is to be in place or whether it should be reviewed. Since children's aid societies are increasingly reluctant to perform this function and the government is not yet prepared to fund such services and establish standards for them, how can this be reliably provided, given the heat in the situation?

Subsection 35a(4), the phrase "legitimate reason": Why is the word "legitimate" added here? Although this may seem a small point, its addition suggests to us that the thinking behind the proposal is that, unless specified, all other reasons are illegitimate. Access denial has already been deemed unlawful, not deplored or regrettable or to be questioned, but wrongful; and use of the word "legitimate" clearly implies that the denier better have a very good reason or else. In the delicate, complex and emotional minefield of family stress, this not-so-subliminal attitudinal word is not helpful and should not be used.

Subsection 35a(4), the phrase "such as one of the following": What does that phrase mean? Does it mean something like the following? Does it mean only one, perhaps, of the following? Does it mean that the eight reasons listed are only suggestions? Does it mean that other legitimate reasons may be proffered and should be considered? Are these reasons to be strictly or loosely adhered to?

Subsection 35a(4), paragraph 3, the phrase "was impaired...at the time

of access": How is that phrase to be understood? Will the court rely on just verbal or viva voce argument about the definition? Does alcohol on the breath qualify or would the person have to have slurred speech or dilated pupils? If the parent had returned the children on a previous occasion impaired, and by what standard of proof without affidavits, does that justify, is that a legitimate reason, for refusal of access subsequently? If past history is not to be introduced, how can the custodial parent reasonably explain his or her recognition of the signs based on years of experience with them?

Subsection 35a(4), paragraph 7, the phrase "numerous occasions" and the phrase "reasonable notice": How is "numerous" to be defined? Is it more than one, more than two? What will constitute proof? What is "reasonable notice"? If a parent calls half an hour before he or she is expected and says he or she is not coming, with children waiting and plans made, is that reasonable notice? Is any notice acceptable as long as there was some form of notice, regardless of what the no-show does to the children?

Subsection 35a(4), the list of eight reasons: We would suggest that if this approach is to be used, two other legitimate reasons need to be considered:

One should recognize that actual and legitimate family emergencies do arise, which mean that the children cannot use the access time scheduled. Death, accident, serious illness or happier reasons such as a special event or celebration should all qualify, especially if the children themselves have indicated they want to go, and there should be a clear understanding that the access parent will accept the custodial parent's word in this regard and make gracious compensatory arrangements. This understanding should apply just as well to events in the access parent's life at which he or she wants the children's participation in a nonscheduled weekend. The family does not live in isolation from the outside world.

If this amendment goes forward, there needs to be some clear recognition somewhere that the children involved in the dispute are persons with definable entitlements. They are not chattels. Access is an entitlement of children to be exercised for their benefit. Access is not an absolute right devolving from parental "ownership." There needs to be clear recognition of the fact that some denials of access are at the urgent and strident refusal of the children to go. The assumption in the proposed amendment seems to be that any denial is only the act of a deliberately withholding former spouse. Our experience indicates that, more than often, any refusal is from the children, and a custodial parent is caught in trying to make unwilling and upset children go for the visit.

Such refusal, especially if repeated, is to be taken seriously and explored. Court action to force access based only on whether or not it appeared to have been refused by the custodial parent may result in serious emotional or other harm to children. Access-parent denial of any behaviour that may have contributed to the children's resistance does not in any way mean that the resistance is artificial or that it is being encouraged by the custodial parent.

Subsection 35a(7), a speedy hearing within 10 days after the motion has been served: We are at a loss to understand why everything has to be rushed within 10 days, unless perhaps it is thought that a successful motion will catch one of the next scheduled access times. This requirement surely goes so far as to violate natural justice.



What will happen to the situation for the custodial parent who has no lawyer or whose lawyer is unavailable? What about a custodial parent who is ill when the notice of motion is served, or even in hospital, or out of the city or even out of the country on a family matter? What about the parent who cannot afford to retain a lawyer privately and who must apply for legal aid? What guarantees are there for a fair hearing if there has been insufficient time to prepare, no affidavits may be drawn up and a lawyer unfamiliar with a client has to rely on viva voce argument? Does that not relegate any hearing almost to the level of: "Did you do it?" "Yes." "Why?" "Because..." "Guilty!"

It seems to us incredible that this one item, access, should be accorded a status amounting to an emergency when other matters must take their turn. Responsible counsel will have to seek adjournment and, in complex situations, leave to use affidavits. This will cause delay, yes, but denying the court access to full information is unfair to the court, to the lawyer, to the parent and, in particular, to the children.

If the custodial parent is away and knows nothing of the motion, will he or she be considered to be in contempt? There appears to us to be no justification at all for such a rapid and intense pressuring of the custodial parent.

Mr. Chairman: Ms. Chisholm, your time has expired.

Ms. Chisholm: To summarize our position—thank you, sir.

Mr. Chairman: I note that you have a summary and you have a list of recommendations.

Ms. Chisholm: Yes.

Mr. Chairman: I just wanted to assure you that the recommendations that you have submitted will be included, with all the recommendations all delegations have submitted, in what our researcher is summarizing for us.

Ms. Chisholm: May I then read just the summary?

Mr. Chairman: I am sorry. Your time has expired.

Ms. Chisholm: I am sorry. I did not understand you.

Mr. Chairman: Thank you for coming and sharing your views. It has been helpful.

The next presentation will be from Ron Quinn. Mr. Quinn, welcome to the committee. You have 15 minutes to make your presentation. You may leave some time for questions if you wish. We would caution you against making reference to matters which are before the courts or might come before the courts.

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RON QUINN

Mr. Quinn: I want to thank you for giving me the opportunity to speak to you. I would like to start by quoting from an article that appeared in the Globe and Mail. The article has the heading, "Scott Calls for Shakeup of Adversarial System," and contains the following:

"Radical surgery is needed to rid the adversarial court system of some of its 'unnecessary and expensive appendages,' Ontario's Attorney General said yesterday.

"The overburdened court system cannot survive unless individuals and corporations are forced to find other means to resolve most of their disputes, Attorney General Ian Scott told a symposium of the Canadian Bar Association (Ontario) in Toronto. Mr. Scott said the adversarial system must be partly replaced by cheaper, less combative methods of settling disputes—no matter how radical they appear.

"He suggested giving judges the power to order cases to arbitration unless the parties are willing to pay all the court costs that the public would normally indirectly pay. Procedures for pre-trial evidence and time limits on oral argument and cross-examination are also needed, he said. And he noted that matrimonial disputes, landlord and tenant disputes, consumer litigation, injury cases 'and a host of other areas are natural candidates for similar treatment.'

"Citizens now expect the courts to resolve virtually all their social problems, Mr. Scott said. 'We have entered a rights-oriented world where counsel or the presiding judge has, to a large extent, replaced the priest, the family doctor and perhaps the politician.' He said that unless a case is going to have an impact on the law itself, there is a good chance it should not be in a publicly financed courtroom at all.

"'We should not fear to re-examine the adversarial nature of our process in order, where possible, to strip away the inequities it may create and to reduce the "fight" mentality and the large social costs that mentality produces. Those who exhort us to stop tinkering with the system or leave well enough alone either do not understand the fundamental nature of the problem which confronts our system or are unwilling to search without intellectual constraint for a solution,' Mr. Scott said."

This article appeared in the Globe and Mail on May 5, 1987.

For some time now, the focus of attention in family law, both in the media and the judicial system, has been directed towards the monetary aspects of a marriage breakdown. Areas such as child support and spousal support, division of assets, etc., have been dealt with. These items are important and must be addressed when a marriage breaks down. Laws are needed not only to ensure settlement in a fair and impartial manner but also to ensure that judgements, once made, can be enforced.

Law serves two functions in our society. First, it serves to order and regulate the affairs of society. Second, law acts as a standard of conduct and morality for society. Through both these functions the law serves to achieve a broad range of social objectives. Now that laws are in place that address the monetary aspects of a marriage breakdown, there can be no excuse for not tackling the most serious problem of all: access abuse.

Surely there can be no more important duty for society than to act in the best interests of the children of a marriage. Nothing can be more terrifying and disruptive to a child's life than the loss of a parent. Nothing can be more destructive to a child's self-respect than to realize that he is being used as a weapon by a bitter and vindictive parent to extract revenge on a former spouse.

Children sorely need the support, guidance and love that both of the parents can give. This is especially true during and after a marriage breakdown, when the children find that through no fault of their own their whole life has been turned upside down in a most unsettling fashion. The children's need for reassurance and support from the parent who has had to leave the matrimonial home is critical in helping them to overcome the inevitable sense of loss and abandonment that occurs at this stressful time in their lives.

The need to maintain and protect a close, ongoing relationship between the children and both parents is paramount. Society, and our legal system above all, must promote the concept that both parents co-operate and continue in their traditional roles as mother and father to their children during and following a marriage breakdown.

Dr. Edward Taynor in his excellent book entitled *Helping Your Children With Divorce: A Compassionate Guide for Parents*, notes that children function best within a consistent and predictable routine and that this is especially true in the aftermath of divorce. Erratic visitation schedules that children cannot anticipate and depend on cause problems. Research shows that the more time a child spends with the father the better, and it is his recommendation that fathers should not see their children less than once a week if it is at all possible. In his opinion, the most important guideline to follow in these visitation arrangements is for the parents to make a co-operative effort to maximize the children's access to both parents.

Times have changed. No longer do mothers routinely stay at home and care for the children. In the majority of today's families, both of the parents work. This, thank God, has led fathers to play a much more active role in the raising of the children. This contact has resulted in a much more involved and closer relationship between the father and his children. The result is a positive effect on the overall wellbeing of the children and a strong desire by many fathers to remain most active in their children's lives.

In many cases, both of the parents are equally involved and capable of the many responsibilities required to raise the children. In the last issue of the *Globe and Mail Report on Business* magazine, the lead article was entitled *The New Executive Father*. The article documented how a new breed of dads is trying to combine their careers with the responsibilities of child rearing.

The children for their part are equally dependent on both of the parents, not only for their physical but also their emotional needs. Far too often it is assumed that the mother is the most dominant influence in a child's life and, therefore, the only parent who is capable of raising the children of the marriage.

Dr. Jim Henderson, the MPP for Etobicoke-Humber, who I am sure you know well, has authored a paper entitled *On Fathering (The Nature and Functions of The Father Role)*, which describes the importance of the father role in the psychological development of children.

Michael E. Lamb has edited a book which surveys many professional studies concerned with the role of the father in child development. There are several significant findings brought to light in the book, not the least of which was the following:

"There is every reason to believe that children raised in single-parent families will be at risk. The absence of a primary socializing agent (most



often the father) is likely to have direct effects on the child and indirect effects mediated by the emotionally and economically strained and often socially isolated remaining parent. Most profoundly disturbing is the fact that, whereas many societal practices are being discontinued, little attention is being given to constructing alternatives. The determination of the effects of discarding the traditional mechanisms of socialization and the evaluation of feasible alternatives are both urgent priorities for future research."

In a chapter entitled Historical and Social Changes in the Perception of the Role of the Father, John Nash predicts:

"Since society does not possess either the technology or the willingness to dispense with mothers, the family as a mother-father-child triad will probably continue. Moreover, if my hypothesis about father-daughter relationships is correct, the present generation of girls brought up by warm fathers will lack the corrosive bitterness evident in the more strident liberationists, who are, I propose, the product of inadequate father-child relationships."

The present state of our legal system does nothing to foster co-operation between parents with respect to children who are the innocent victims of marriage breakdown. In fact, just the opposite is true. The present adversarial system of family law treats the children as mere pawns to be used as weapons in a winner-take-all battle waged by a bitter and vengeful spouse.

Often thousands of dollars, money which can no longer be used for the benefit of the children of the marriage, are spent by the noncustodial parent in a futile attempt to have the children maintain a decent relationship with both parents. Frequently, this battle is funded by tax dollars through the legal aid system at little or no cost to the combatants. To further add insult to injury, the court-ordered access is ignored and flouted by the victor and the battle continues.

Family law experts estimate that tens of thousands of separated and divorced parents not granted custody of their children are being denied access to their children by their ex-spouses. Usually these access violations are in contravention of court orders that supposedly guarantee the noncustodial parent's visitation rights. There can be no doubt that a serious problem exists and that our present laws are totally inadequate.

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In many of these cases, the custodial parent is playing out the personal conflict with the other through the children. When one parent tries to win sole custody of the children, it is the children who lose, not the other parent. Children are very sensitive to any conflict and tension in the ex-spouse's relationship. Every attempt must be made to circumvent this by incorporating into our legal system the necessary legislation to prevent our laws from being misused by bitter, vindictive parents who are intent on abusing the legal system to the detriment of our children. When their anger is expressed by the undermining or devaluing of the ex-spouse to the children, these children will develop long-standing psychological problems.

The process of divorce brings about feelings of helplessness and powerlessness in most children, which lowers their self-esteem and sense of mastery in the world. Children should not become bargaining chips in parental conflicts. Parents who are very bitter towards an ex-spouse usually want their children to share these negative feelings.



Mr. Chairman: I do not like to interrupt you, but I just wanted to remind you that you are getting close to the end of your time and you appear to have several pages left. I thought I would remind you in case you wanted to sum up in some way.

Mr. Quinn: I thought I had it down to about 15 minutes. I will carry on at the bottom of the page. The bill that is before us today represents the mere tip of an iceberg. It is a Band-Aid attempt to put some respect back in our family law by trying to correct some of the abuse that occurs daily in the present law. Despite the misleading rhetoric being promoted by radical feminist groups, the bill does nothing to change the amount of access that is granted to a noncustodial parent. This determination of whether or not the access is appropriate or in the interests of the children has already been carried out.

The bill serves merely to enforce laws and court orders that are already in place. The very fact that our present laws are so weak and so unenforceable that we must pass more laws to try to enforce existing laws is a true measure of the sad state of affairs in this area. The present Bill 124 is a well-meaning but misguided attempt to treat the symptoms of access abuse rather than an attempt to cure the disease itself.

Where in this bill is the necessity for proof before access is denied? Where are the provisions for the reversal of custody, should the custodial parent continue to flout the law and subject their children to access abuse? Surely these parents are not acting in the best interests of the children. Where are the provisions to ensure that the children will not be denied access to their grandparents?

The bill in its present state will fail to prevent the continued problem of access abuse. In the few areas specified in the bill where access should be denied, such as when the visiting party appeared to be so impaired by drugs or alcohol at the time of access, I would strongly recommend that the bill state that access can only be denied if this judgement is also supported by a policeman who has been called to the scene.

The committee has before it today the ability to do something meaningful about the current problems that afflict family law and to treat the disease rather than applying more bandages to an open wound. We are years behind other legislators in the world when it comes to taking a reasoned and rational approach to family law. This committee has the opportunity to bring our legislation out of the Dark Ages and make it much more attuned to the modern society in which we live.

As I said earlier in my presentation, times have changed. The time has come to make the marriage breakdown a more humane experience and to encourage parents to overcome their bitterness by acting in the best interests of the children of the marriage. What child wants to see his parents battle it out in a courtroom? I am sure you are aware that there are two additional private members' bills currently in the Legislature that promote these goals in our society. I am referring, of course, to Bill 45, introduced by Mr. Cousens, and Bill 95, introduced by Dr. Jim Henderson. These bills are in tune with the times and represent the approach that is needed to reduce the acrimony between the parents during marriage breakdown, caused in no small part by the current adversarial nature of our family law.

These are the solutions our children want. These are the solutions our children need. To fail to consider amendments to Bill 124 to incorporate the

proposals contained in Bills 45 and 95 is to do our children a great injustice. Our children do not want political compromise. Our children do not want procedural wrangling. Our children want mommy and daddy to stop fighting. Shall we apply a bandage to an open wound or shall we attempt to treat the disease causing the wound? Imagine, if you can, if all that our doctors would do for us when we were sick was give us a bandage.

Mr. Chairman: Thank you very much, and thank you for summarizing it in the way you have at the end. I regret that there is no time for questions.

Our final presentation this morning is from an organization entitled Fathers for Justice. Before us, representing that organization, we have Brad Salmond, the president, and Ron Sauvé, vice-president. You have one-half hour and you may divide the time as you see fit between presentation and questions.

Mr. Salmond: Thank you. I appreciate the fact that you are going over your scheduled time as per the old schedule.

Mr. Chairman: We wanted to fit you in.

#### FATHERS FOR JUSTICE

Mr. Salmond: I will start with a short comment about the group to familiarize you with us. I will then read our letter of introduction and our recommendations. I have a couple of comments I would like to make, Mr. Sauvé has some comments he would like to make and then, hopefully, there will be time for questions.

The first thing is that Fathers for Justice is a self-help, volunteer organization, and although the name is Fathers for Justice, we do in fact have mothers and second partners, wives and so on in the group. We also have a subgroup called Mothers for Justice, which is a group of noncustodial mothers, who, as you are well aware, have many social and legal problems that are different from noncustodial fathers. We are a registered charity but we do not get any government funding.

We are responsible in many ways for some changes you have seen in the Unemployment Insurance Act recently, through the John McInnis case. We have been responsible for instituting the first pilot project, government-funded access program in Ontario, in Kitchener, John Sweeney's riding, and many of the items you see in the present act today were in fact presented by us in previous submissions. We will very shortly be opening our first storefront-type office in Kitchener.

I will read you our letter.

Honourable members, ladies and gentlemen, Fathers for Justice comes before the government today, not for the first time but for the third: once before another committee in 1986 and once with the Honourable Ian Scott in 1987. We have watched and, we hope, helped the government and other agencies to realize numerous deficiencies in family law. We congratulate all concerned for the success in many areas. However, we all have a lot of work ahead of us.

The basis of most of the problems dealing with access are around the inability of both custodial and noncustodial parents to know what they may do and what they may not do. The most asked question in the over 3,000 contacts Fathers for Justice has had in the last two years is, "What are my responsibilities and what are my rights?"

We often say that our group is in the business of teaching people how to be divorced. In the beginning, the fact that a divorcing couple did not know how to behave had little impact because of the small numbers. Today the statistics on divorce in this country are growing at an astounding rate. The devastating effects are felt at every level of our social assistance and legal systems. Our children, the single most important issue here today, usually take the brunt of these problems.

We have seen other laws made or changed to deal with problems. You are about to add some more. Certainly much of what is proposed is necessary, but other parts will, without a doubt, lead to abuses: some because of the power given to individuals by ambiguous wording, many more for the same reason other laws are misused, and that is ignorance.

The laws on drinking and driving have not reduced the problem, but the education and the social pressure has. The most important message we have for you today is legislate, but place responsibility on the custodial parent for access as you place responsibility on noncustodial parents for support. Most important, educate those who are to live with these laws. We will help you, but we cannot do it alone.

One other concern we wish to point out is your responsibility to see that this law can be used by everyone. Many of the noncustodial parents are financially unable to use a lawyer or too ignorant of the legal procedures to represent themselves. Legal aid will be overburdened and the courts will be tangled by pro se work. You must make arrangements for unilateral enforcement by an agency similar to the supporting custody office or by the police.

We have also been recently advised by the offices of the Attorney General and Community and Social Services that the financial aid to supervised access and access exchange centres in this province will be terminated. This comes in the face of statistics that show that these centres are extensively used when available and will surely be required in more numbers in the future.

This also comes at a time when Manitoba will begin the operation of its access assistance program, which "is designed to assist in facilitating the right of the children to the noncustodial parent." That quotation is from Robyn Moglove Diamond, the director of the family law branch, Department of the Attorney General, Manitoba.

Would this government please explain to us how it intends to exercise the options outlined in clauses 35a(2)(b) and 35a(6)(a), the orders for relief, that being the requirement of supervision?

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Finally, we wish to convey our concerns about the intent of this bill. Upon reading the content, one is struck by the fact that there are more reasons to deny access listed than ways to enforce it. The idea that one should be allowed some judgement is important, but what is reasonable to one person may not be to another.

Abuse of a child cannot be tolerated, but we must be careful that we do not allow people to decide that normal but different lifestyles constitute valid reasons for denial of access. The motivation of this bill is not to allow those unfit parents access but to stop those ignorant of the abuse they are causing by denial of access or those too vindictive to care.



Madam Justice Wilson, in the Supreme Court case of *Frame v. Smith and Smith*, in 1987, stated:

"The custody and access order, by splitting access from custody, puts the custodial parent in a position of power and authority which enables him or her, if so motivated, to affect the noncustodial parent's relationship with his or her child in an injurious way. The selfish exercise of custody over a long period of time without regard to the access order can utterly destroy the noncustodial parent's relationship with the child. The noncustodial parent (and, of course, the child also) is completely vulnerable to this. Yet the underlying premise in a grant of custody to one parent and access to the other is that the custodial parent will facilitate the exercise of the other's access rights for the sake of the child."

We know there are many more people out there committing these abuses than others would have you believe. That is why we are here today to ensure that sound and effective legislation is produced by your committee's recommendations.

The following are amendments and reasons for our recommendations. Only those sections of concern to us are discussed and all others may be deemed acceptable. However, I do want to make a note that in many cases we were not too sure how we could change some of these things in an appropriate fashion. We will hope that all your readings and work will come up with it.

Subsection 20(4a): The phrase "encourage and support" should be replaced by the phrase "be responsible for encouraging and supporting." This is to instil the legal requirements of meeting the government's position that "there is wide agreement that...both parents should have as much involvement in the life of children after divorce." That was a quote from the Honourable Ian Scott.

Subsection 24(2): Add clause (i): "the permanence and stability of the access pattern with the noncustodial parent up to the time of the application or motion."

Two concerns arise: first, that regular, stable patterns should be maintained and any disrupted patterns should be reviewed to discover the cause. One particular item is that the fact remains that many noncustodial parents require time to establish suitable households for access or setting up some kind of reasonable overnight access, and many times this is not taken into account when looking at a bad pattern of access.

Subsection 24(3): This should be removed completely. There are numerous statutes that can be used to deal with the problem of assault. The definition of the word "violence" can be interpreted in a very wide range of verbal and physical varieties. There is no distinction between the violence on an innocent child and an intimidating adult. Since the act allows only for oral evidence, how are such allegations to be proved or defended?

Section 28a: We ask that a subsection be added: "(5) When ordering specified times or days, the courts shall give consideration to frequent, regular periods for initial applications or motions."

This is to ensure that immediate reassurance of love and security for a child is maintained during an initial separation. One of the most traumatic and emotionally provocative situations we run into is that immediately after a separation, there are no allowances for that contact. Certainly, if there are



abuse situations, we agree that some time must be taken; but if there are not those allegations involved, then the system should make allowances for immediate recontact.

Subsection 31(10): Remove it completely. We have very little faith that the courts are able to define what constitutes financial hardship. Examples of this are garnishees of 50 per cent of gross wages and forced bankruptcies. Also, our position has always been to avoid the court system, and thus we support mediation fully. We feel that the government should consider supporting financially mediation efforts for those who cannot afford them. Given the level of even legal aid fees, this would be cost-effective and for the courts, we feel, time-effective.

Subsection 35a(1): After the phrase "wrongfully denied him or her access to the child," you should add "or fail to be present upon return of the child." We have seen numerous situations where this has occurred and feel that expenses should be reimbursed if they occur in this instance. We heard this morning from a gentleman who was in fact charged with abduction because of his being unable to find his ex-spouse to deliver the child to, and that is not an unusual situation.

Clause 35a(2)(b), supervision: The real situations for the requirement of supervised access have never been questioned by Fathers for Justice. Unfortunately, in the past, such supervision was ordered in the custodial parent's home. This is totally unacceptable since the atmosphere conducive to a positive exchange is highly unlikely. This leaves us with the neutral location. As stated in our opening remarks, this government has seen fit to discontinue funding for such centres. Thus, to expect the volunteer community to accommodate legislated action is negligent. You tell us how to deal with this section.

Section 35a: I would like to see added clause 35a(2)(e): "Reduce support until regular access pattern is established." We can understand the reluctance to inflict a financial penalty such as a fine or bond, but financial considerations can be a strong motivating factor to recognizing the error of one's ways. This uses the lever without long-term effects if the person co-operates immediately.

Paragraph 35a(4)1: Remove the phrase "emotional harm." This is a term that is too subjective to a person in a heightened state of stress or whose thinking is blinded by vindictiveness. Also, we have already established the fact that denial of access itself contributes to "emotional harm."

Paragraph 35a(4)4: Add after "to exercise the right of access" the phrase "without reasonable notice." Even with plus or minus an hour, unexpected events could delay an arrival, especially one of great distances. Very often our group has facilitated access from one section of the country to another, as far away as Vancouver.

Paragraph 35a(4)5: Replace the phrase "believed on reasonable grounds" with "provides evidence the child was suffering from an illness." If a child is so ill that he cannot be moved, then we probably have "reasonable grounds" to suggest that the child has seen or should see a doctor. Thus, a certificate is easy to obtain. As to one's ability to determine for oneself the seriousness of the illness, we have a question. What would the response be if the noncustodial parent decides on Sunday night that the child is too ill to return?

Clause 35a(6)(a), supervision: How and where?

Subsection 35a(7): We would like to see the time period changed to five days. I have heard a number of submissions saying that 10 days is too short. However, the previous legislation, Bill 60, allowed three days. Obviously the government feels this may burden the courts. However, to wait 10 days could extend the initial denial and the re-establishment of contact to two or three weeks and perhaps longer. Time and love are things that cannot be saved, only spent or lost.

Subsection 35a(8): Change to 60 days. Regardless of the education program the government may plan for judges concerning this legislation, old attitudes die hard. The example is the 1950s divorce model we live with now. We believe a pattern will have to be established to sway many courts, and this takes time. By "pattern," I mean a pattern of access denial. Also, from a practical point of view, it often takes that much time to get legal aid. Particularly in Toronto, trying to get an appointment even for just an assessment is time-consuming.

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Subsection 35a(9): Completely remove. Ask any judge his opinion of individual oral evidence in family court and you will know why we recommend the admission of medical reports, affidavits and police occurrence reports as normal submissions.

Subsection 35a(13): Remove. How do you define bad faith? If someone uses bad judgement in a circumstance, then a judge can direct him accordingly. If one perjures himself, that is a crime and should be punished as such.

As the last item—we have been pretty milquetoast up to now, I think—excuse us, but where is the section for the restraint of harassment by custodial parents and company? This assumes only one side is capable of such action and is discriminatory in its nature. There are statutes to deal with this already. Please remove it.

There are other considerations we would like to see to Bill 124. These are some things that could be considered quite controversial and probably could not be instituted immediately with this bill, but maybe could be considered.

Movement: Upon an initial separation, the children may not be moved more than 25 kilometres from their place of permanent residence. This is to enable access to be facilitated. Upon the granting of a final order for access, it should include allowances for movement. We realize we cannot restrict an individual from moving, but again we must place some responsibility on the custodial parent for ensuring access. We feel all transportation, as well as costs, up to but no more than 75 kilometres' drive, should be shared by both parents equally. Possibly some means of offsetting costs can be determined if one party is incapable, such as maybe offsetting the support costs and so on.

All transportation and costs beyond the 75 kilometres should be the responsibility of the moving party. You have probably heard submissions such that custodial parents move from Kitchener-Waterloo to Vancouver, British Columbia, and therefore totally destroy any possibility of an access order every other weekend or every other month in some financial situations.

Custody: If on numerous occasions access has been wrongfully denied and

the courts find that the custodial parent would not make any attempt to comply with an access order, let custody be reversed; in other words, recognize the maximum contact principle of the federal Divorce Act.

Finally, on access, the Attorney General (Mr. Scott) thought we were way over our heads on this one, but I still think we have to look at both sides in situations. Many of us who feel that we want to be responsible parents who have to follow other parents who are not holding up their fair share of responsibilities often do not fare well in front of an unsympathetic judge. So we included this in our last submission to Ian Scott, and I put it in here again.

Access: If on numerous occasions access has not been exercised without reasonable notice and the courts find that the noncustodial parent would not make any attempt to be a responsible parent, that access is to be terminated. The parent could reapply at a future date when any conditions required to show competency are achieved.

Those are our basic submissions, and I would like to make some comments. I have not been able to watch, as many people have, many of the things that have gone on here at the hearings, but I have heard some today and would just like to comment on them. They are not necessarily in the order I heard them.

There was one comment about custodial parents getting tired of a mediation session, wanting to in some way get things over with. There are many noncustodial parents who get tired of the battles too and just throw up their hands and walk away in the hope, sometimes desperate hope, that the child will eventually come to them. In some cases they do; in many cases they do not.

There were the concerns about the child who does not want to go on a visit. I experienced that personally, but the question came up the evening I was to return my children and they said they did not wish to go home. What do I do then? Do I have the right to make that decision on the basis that they have now decided they wish to stay with me? My answer to them, of course, was no. Our arrangements were set and I would encourage them to return accordingly.

There was the comment that only 15 per cent of the situations in Manitoba had access problems. I understand the percentages in some cases of abuse are not much more than that, and, gee, that is not a very large amount. But if you multiply that times the number of children involved in divorces in this country and the almost exponential growth, you are talking tens of thousands.

There was mention about the only crime they are aware of in this society of having an individual where the victim is expected to continue to negotiate or act with the perpetrator. I suggest that being a noncustodial parent in this country is the only crime for which we do not allow any rehabilitation. Once a noncustodial parent, always a noncustodial parent. You are no better or worse, no matter how hard you try, and that is just not true.

You might be interested in noting that Fathers for Justice does not support Jim Henderson's bill on joint custody at this time, in the way it is worded. The reason I am bringing this up is because many other people have mentioned it. The reason we do not support it is because, the truth is, this society in Canada is not ready for it, either socially or legally. They cannot even support the current system of custody, support and access.

We need an education program. Fathers for Justice is in the business of



doing that, but we feel the government should be doing the same. One of the recommendations I think this committee should be making is that a very strong education program towards appropriate divorce behaviour in this country be brought forward.

The idea of teaching people how to be divorced is not a very pleasant one, but quite obviously, we have not done a very good job of teaching people how to be well married. We are facing more and more divorces all the time. If we are going to have to live with it, I think we should try to improve it.

For example, I learned at a convention two years ago that Japanese society realizes, right from the beginning of any divorce—the first thing they do is sit down and work out arrangements for the children. That is the first thing. Nothing else can be discussed legally until that is done. That has been going on for 40 years. It is a very good way to deal with things.

Finally, there was the comment: "Ten days notice is not enough. You cannot get a lawyer. You might not have time to prepare for a case and so on." I would submit to you that right now this government is acting, through the agency of the support and custody enforcement office, not only on short notice but without notice on garnishment and so on. If people are concerned about the 10-day notice in this bill, I think they should be concerned about the way SCEO is acting right now too.

I would like to turn it over to Mr. Sauvé for his comments.

Mr. Chairman: You have about five minutes left and there are two members of the committee who would like to ask questions, if you would like to leave some time.

Mr. Sauvé: I am just going to cause some thought here on the basic, "Why are we here?" We are here to try to enforce a law. I hear a lot of people throwing in a lot of stuff that has nothing to do with enforcement.

We have had an agreement or a court decision by a competent juror that access should be given, and somebody is defying that order. All factors have been considered. If something comes up between the original order and another problem occurs, the recourse is the same for everybody: You make application to the court. The process is simple. The people who do not understand that and take the law into their own hands are defying everything.

Let's look a bit at the history here. Back in the 1950s and the 1960s, we heard from the feminist movement that men were leaving the children and this was terrible. I grew up in an age where men were encouraged to be part of their children's lives. Now, I sit here and listen to the feminists again saying they do not want men involved with the children. But that does not help me to break the bonds with my children, or you with yours, or you with your grandchildren.

The language of this law: "access," "custody," are words of slavery—"custody," "ownership." Children are unto themselves like you are unto yourself. We, as parents, merely provide guidance for them. When we bond with those children, we become part of their lives and you cannot break that bond with a court order. It is very simple. It cannot be done.

Your job here as a committee is to send out word to this society whether men have a right to be with their children or no recourse at all. Were the men of the 1950s right in abandoning their families and is that the course of men



in the future, or do we have a right to be part of our children's lives? That is your job to decide here.

Once society accepts that both parents have continuing financial and emotional obligations to their children, we will be much better off. The current custody system says one parent has financial obligations and the other parent has emotional and there is no crossing between those.

Let's look at some very bizarre behaviour of our society. A well-respected organization called Parents Without Partners has a program called Dad for a Day. Why? Because a lot of children are without dads. Why? Because some men have taken off and also because the court has stripped men of the right to see their children.

Another organization has very bizarre behaviour and that is Big Brothers. We have men in Ottawa looking after the children of men in Toronto and men in Toronto looking after the children of men in Ottawa because the courts allow the children to be taken. It is really bizarre behaviour.

Let's look at what the children's needs are. First, they do not want mommy and daddy to break up, but that usually cannot be reversed, so they want the fighting to stop. They just want it to stop, especially the fighting over the child, and especially in front of the child and that occurs on access exchange quite often.

Another thing children are concerned about are the arrangements for themselves. Like ourselves, we want to know where we are going to sleep tomorrow night. We want to know what we are going to eat or if we are going to eat. Children are very concerned about those problems. When instability is given to the situation, as it is with access denial, you remove a child's self-esteem and security.

As far as a child not wanting to go on access is concerned, let's face it, I have seen both my children demonstrate in front of my wife and in front of me the behaviour of trying to please us both; in other words, not wanting to offend us. Having to drive my children 40 miles home, they cried, every time for a year, every weekend; tough stuff. It is not because she was so terrible; it was because they missed me. But I could have interpreted that behaviour as the child not wanting to go.

Far too often, we hear about kids from broken homes getting into trouble. Why? Because nobody listens to the children. They listen to mom or they listen to dad but they do not listen to the child. The child has an independent point of view that is not being represented, cannot be represented and will not be.

In summation—

Mr. Chairman: That is a good point to end on.

Mr. Sauvé: I have two articles here I would like to submit on bizarre behaviour within our court system and within our social work system. I will give these to you.

Mr. Chairman: The clerk will take them. You ended on a good note of commenting on the children and we thank you for coming before us and sharing with us the views of your association.

Mr. R. F. Johnston: Legislators are always good people to talk to about bizarre behaviour.

The committee recessed at 12:33 p.m.

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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHILDREN'S LAW REFORM AMENDMENT ACT

WEDNESDAY, APRIL 12, 1989

Afternoon Sitting



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Neumann, David E. (Brantford L)

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Owen, Bruce (Simcoe Centre L)

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Substitutions:

Offer, Steven (Mississauga North L) for Mr. Beer

Reville, David (Riverdale NDP) for Mr. Allen

Clerk: Decker, Todd

Staff:

Swift, Susan, Research Officer, Legislative Research Service

Witnesses:

From the Canadian Bar Association:

Slan, Paul, Family Law Section

From the Ministry of the Attorney General:

Cochrane, Michael, Counsel, Policy Development Division

Individual Presentation:

Leeson, Elizabeth

From the Merrymount Children's Centre:

Lubell, Jan, Executive Director

From the Emily Stowe Shelter for Women and Children:

Chiasson, Debbie, Counsellor

Raines, Sharon, Children's Advocate

Individual Presentation:

Majury, Diana, Law Professor, University of Western Ontario

From the London Status of Women Action Group:

Buist, Margaret, Past President; London Ad Hoc Committee for Family Law Reform

From Ernestine's Women's Shelter:

Gray, Elizabeth, Chairman, Social Action Committee

O'Hara, Maureen, Counsellor

Pellegrini, Laura, Children's Advocate

Individual Presentations:

Coupe, Alan

Blair, David W.

Davy, Howard



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Wednesday, April 12, 1989

The committee resumed at 1:36 p.m. in room 151.

CHILDREN'S LAW REFORM AMENDMENT ACT  
(continued)

Consideration of Bill 124, An Act to amend the Children's Law Reform Act.

Mr. Chairman: Members of the committee, I am sure if we start the other members will come in quite quickly; that has been our experience. We have a very full agenda this afternoon. I would like to start as soon as we can so that we can get through all of the delegations. Mr. Johnston has given me notice of a point of order and I would recognize him.

Mr. R. F. Johnston: Thank you, Mr. Chairman. Very briefly and not to take the witnesses' time at all, I would like to clear the record a little about something which happened this morning. I have been contacted by the Ontario Public Service Employees Union, which tells me that our first presenter, Mr. Rosenitsch, was not presenting on behalf of Local 311 as is stated often in his presentation. In fact, he is not a member of that particular local and that local has not authorized that document to be presented to us on its behalf. We will be receiving a letter from the president of the union, Mr. Clancy, to indicate that, but I thought members should know that before we go any further.

Mr. Chairman: Thank you for drawing that to our attention, Mr. Johnston.

Our first presenter this afternoon is the Canadian Bar Association. Representing that association, I am pleased to welcome Paul Slan. Mr. Slan, you have one half-hour to make your presentation. If you wish to leave time for questions, some members may appreciate that. It is up to you, however, how you divide your time.

CANADIAN BAR ASSOCIATION

Mr. Slan: The Canadian Bar Association's family law section did strike a committee to study the bill prior to its first reading and we did make recommendations to the Attorney General (Mr. Scott) between the time the bill was first introduced, I believe, in the last session and the time it was introduced again this session. The submissions I will be making are on behalf of the Canadian Bar Association and the results of the studies of that committee.

It is our view that access, like custody, should have one criterion, that is, the best interests of the children. We do not believe access is the father's right or the mother's right, but the child's right, and is to be exercised in accordance with what is best for the child.

We have found through experience that the courtroom is not the ideal process or procedure. It is not suited to determination of what is in the child's best interests. The courtroom places parents in an adversarial stance

towards each other. Lawyers and judges are not social workers. The children are drawn into the dispute. In many cases the children are asked by their parents what they want in terms of access, and it has been our experience that the children usually say what they think the parent wants to hear.

The distillation of that is that access, like custody, is a very complicated problem. The result of the complications has been a recognition that access problems and custody problems should be solved outside of the courtroom, if at all possible, with the courtroom used only as a last resort.

The techniques that have grown up in order to resolve these types of problems on a practical basis in the family law bar are the following, in order of priority: (1) negotiation between the lawyers; (2) if negotiation fails, mediation, which can only be done with the consent of the parents; (3) a court-ordered assessment, which can be done without the consent of the parents; and, as I said earlier, (4) litigation as a last resort. The steps normally go in that order.

It has also been recognized by the governments of the day that these steps are required because mediation is enshrined in section 31 of the Children's Law Reform Act, although, again, it cannot be ordered by the court. Assessment is enshrined in section 30 of the Children's Law Reform Act. Independent representation of children has been recognized in the legislation, both in child protection proceedings and in custody and access proceedings. In recent years, the office of the official guardian has been restructured significantly to provide for mediation, a form of assessment and also for independent representation for children.

All of these things have grown up in recognition of the fact that courtrooms and lawyers are not really the best suited to resolve problems of access and custody. I should add that in fact an entire social service industry has grown up to service mediation, assessment and representation of children.

If we look at Bill 124 in that context, we conclude it is a giant step backward from the thrust of what has happened in the last several years. The bill offers disincentives to negotiation, disincentives to mediation and disincentives to an assessment. It makes it easy for the parents to litigate the problem and to continue their fight in the court.

Elaborate criteria are set out in the bill to determine whether a denial of access has been wrongful or not. Again, this is simply inviting litigation. Some of the criteria concerning the denial of access refer to the parents' belief on reasonable grounds. Those are words lawyers love to hear, because they are so capable of subjective interpretation that they can involve litigation for an indefinite period of time.

The bill calls for a viva voce hearing within 10 days of service of the notice of motion. Aside from the problem of there being no court facilities, as far as we are aware, to accommodate that, the very fact of a court hearing coming up within 10 days of service of the motion leaves no room or very little room for negotiation, leaves very little room for the parties agreeing to enter into mediation and leaves no room at all for an assessment to be done. An assessment cannot be done in that short a period of time. It also leaves no room for the involvement of the office of the official guardian, because the official guardian, when he does get involved, almost as a standard procedure needs four to six weeks to even get acquainted with the case.

It is our view that if this bill is adopted and if the methods set out in it are followed, it will simply be encouraging the situation we had many years ago, which was a strictly adversarial approach to this problem. We believe it will aggravate fighting between the parents, tension between the parents, and all of that will inevitably impact upon the children.

There are cases—we believe they are in a minority—where a court order and an appearance before the court are the only way to enforce the existing order. We do not quarrel with that, but it is our view that Bill 124 does not add anything to the existing remedies; it does not add one thing to the existing state of the law.

The remedies today are moving for a contempt citation, which is a useless remedy in any event. No one really wants to put the custodial parent in jail; what he really wants is to get his access. The existing state of the law provides for variation of access. There is nothing stopping a judge today from ordering makeup time; there is nothing stopping a judge from ordering supervision of access; there is nothing stopping a judge from ordering mediation except that it must be on consent, but the bill does not change that in any way.

So there is nothing new here. One can perhaps say it does allow a mechanism whereby you can get before the courts quickly, but again, the Supreme Court of Ontario sits on an emergency basis every Thursday in Toronto. In the districts, there are judges available to hear motions several days a week, and normally a notice of motion can be brought on two days' notice. So there is really nothing here in this bill even in terms of the process that will alleviate the existing problem.

I just want to mention a couple of other miscellaneous matters; I probably have touched on them.

We do not think the facilities are available. The bill provides for a return to the court that made the original order for enforcement of the order. In the Supreme Court, we have canvassed the judiciary. They do not believe the facilities are presently available. We do not know what the government is contemplating in terms of whether High Court judges will hear these motions or whether masters will hear them. There is no mechanism we are aware of in the district court or in the provincial court to deal with these applications.

On a final note, we are concerned that the already high cost of litigation is going to be increased by inviting litigants to continue their fight through the court as opposed to pursuing alternative remedies.

That is the submission.

Mr. Chairman: Thank you very much. We appreciate the fact that you have left time for questions, because I am sure members will have questions of you.

Mr. R. F. Johnston: That was very succinct and very helpful.

On the last point—this is a point which I, not being a lawyer, do not think has been raised before us at this stage—is your concern that you are not sure which courts these will go to and whether judges who are familiar with the decision in the first place will have a role in this? Can you explain that for me?

Mr. Slan: No. I know which court it will go to. The bill provides that it would go to the court that originally made the order, so if it is a Supreme Court order, it goes to the Supreme Court; district court, back to district; provincial back to provincial. What we are concerned about is that none of those courts are set up to handle a flood of access enforcement cases. They are all working at capacity as it is.

Mr. R. F. Johnston: The other thing I wanted to raise with you, because it is continually a side dialogue here with ministry staff, who are not present right at the moment, is that lawyers who have been before us and are against this bill have been continually taken to task by the ministry official on the basis that they misunderstand what is going on here; that the existing remedies do continue, in terms of material change specifically; and that what we have here are much smaller matters to be dealt with that should be able to be dealt with expeditiously before a judge, very quickly, etc.; and that is being misunderstood by representatives of the bar who have been before us, virtually unanimously opposed to this move. What is your response to that?

Mr. Slan: With all respect, I think it is being misunderstood by the ministry. I do not think you can divorce, if I can use that word, variation and enforcement. You cannot put these issues into little boxes and say, "This is a variation and it is completely separate, and this is enforcement and it is completely separate." It is not like a judgement for payment of money where it is a matter of enforcement. It is an ongoing, static situation and I just do not think you can say that variation falls into one category or class of cases and enforcement falls into a completely separate category.

Mr. R. F. Johnston: The only thing, if I may ask it, because you are so succinct in your answers as well as your presentation, is around the rights of kids. I guess what I am surprised at is the lack of specific language in either the existing act or Bill 124 in terms of how a child accesses the system to let his or her wishes be known at various times. As you say, there is the official guardian who can be brought in, albeit with a long waiting period. Can you tell us a little about when a child does, at this stage, have the right to initiate questions about the access orders and that kind of thing?

1350

Mr. Slan: The existing legislation, section 24 of the Children's Law Reform Act, lists a whole set of criteria as to what factors are to be looked at in determining the best interests of the child. One of those factors is the views and preferences of the child when those can be reasonably ascertained. If the official guardian is not involved, then it is up to the parents; that input is completely dependent on what the parents do. If the parents agree, or if the court orders an assessment, then presumably that input will come in through the assessment report. If the parties or the court ask for the appointment of the official guardian, then presumably that will come in through the input of the official guardian. By the way, the office of the official guardian will always look at a case, but it is up to them whether they will take the appointment or not.

Mr. R. F. Johnston: The right to independent counsel for kids in this situation, which we have in other legislation, I do not really see as being there. In this process there is nothing which says a child has standing in the court or even has a right of notice of when these court proceedings would take place, under Bill 124, as an example. Those are all things which we have put into the Child and Family Services Act. They have different circumstances, but—



Mr. Slan: It is in the Child and Family Services Act; several years ago a panel of lawyers was set up. My understanding at the time was that it was not in the custody and access legislation because the cost would be prohibitive to have a standing panel of lawyers involved in each and every case. Certainly the case law allows for children to be represented. There is no challenge to that whatsoever in terms of custody and access disputes.

Mr. R. F. Johnston: I guess what I am looking for is some consistency with the other acts in terms of the presumption that a child should have his wishes understood and not necessarily interpreted by somebody else's agent.

Mr. Slan: No. It is there, but there is no presumption.

Mr. Offer: Thank you very much for your brief. I want, if I might, to carry on with some of the initial questions by Mr. Johnston and your responses in terms of how one cannot get into just an access order enforcement without getting into almost a variation. My first question is: In terms of the contempt proceedings, from your experience, are they not, first, focused basically on the enforcement of an existing order as opposed to getting into the variation aspect?

Mr. Slan: The basis of the bringing of a contempt application is the breach of an existing order. The defence, however, to a contempt application is normally that circumstances have changed and therefore it was not in the child's interests to allow the order to be enforced in the first place.

Mr. Offer: On that point, though, just carrying on: I know you are well aware that we are dealing with an order which has already been made and has gone through the whole hearing process ascertaining what is in the best interests of the child, and after that hearing we have now been left with an order where custody has been awarded to one person and access to another. That is, of course, the order we are working with at this point. We are now dealing with that particular situation where, in recognition of that order, the noncustodial party is being denied the access.

Under this legislation and for those circumstances, if the access has been denied, we are trying through this bill to provide a mechanism whereby that person can come to court to have the order which was made in the best interests of the child enforced, without having to go through the routine of the contempt of order proceedings and the whole question of what happens and how. I think in your words, it is really not...

Mr. Slan: Contempt is not, but I think you are putting too much emphasis on contempt.

Mr. Offer: But I think you indicated in your remarks that using contempt is almost useless because of the known fact that they are not going to jail. At the very best, they are going to purge the contempt. We are dealing with a mechanism with which that initial order can be enforced without having to go through the contempt proceedings, which you have indicated are virtually useless. I would like to get your thoughts on that.

I realize that in some cases there may be the situation that one of the parties—let's say there has been a material change in circumstances, and on that basis it has moved to another area such as the variation aspect. What I am trying to do is say, in those circumstances where there has not been, why will Bill 124 not provide that remedy to enforce that order?

Mr. Slan: I think that in most circumstances you will find that there has been a change in circumstances, or if there has not, one party is claiming that there has been. We generally tell clients that custody and access orders, and support orders for that matter, are a snapshot in time. They can be varied by the courts at any subsequent time. That is in the legislation, as you appreciate. The snapshot changes very rapidly, very quickly.

I know what you are asking me. You are saying, "What if you are still in the time frame where nothing has changed?" First of all, I think you are putting too much emphasis on the contempt application. You can enforce an order without bringing an application to vary, and you do not have to style it as an application for contempt. You can ask for makeup access. You can ask for supervision of the existing access order. You do not necessarily have to ask for contempt.

Most applications would include in the prayer for relief a request that the person be held in contempt, because that is the strongest thing you can show. That is a clear statement from the court that someone has breached a court order. But I do not see any difference, quite frankly, on a practical basis, between bringing an application to enforce the order and asking for contempt or asking something else and the type of procedure that is contemplated by the bill. You can get before a judge on very short notice as it is today.

Mr. Offer: My initial question was, if we step back from that point where there has been an allegation of material change in circumstance, for that portion of cases, again, I ask, why will this particular bill not work?

As a second question, if I might, from your experience, we have heard, I think it is fair to say, that the contempt proceedings can take a fair degree of time. They are very serious, notwithstanding the fact as per your statement that they are thought of as virtually useless. But they take a fair bit of time, so we have another proceeding.

You do not have to do the contempt. You have something where you have a 10-day period to have orders enforced, and it is a step back from the allegation of material change. I would just like to get your sense as to where this bill does not provide that particular mechanism.

Mr. Slan: I have to emphasize what I said before, that lawyers and clients do not rely on the contempt proceeding in any event. But that proceeding does not and should not take any longer than the proceeding that is contemplated by the bill. That was your second question.

With regard to your first question, dealing with the situation where there is no material change in circumstances, I still cannot see what the bill adds to the existing state of the law. You can still bring your application to enforce it, returnable on two days' notice, and get before a judge as quickly as you can get before a judge under the procedure contemplated by the bill.

1400

Mr. R. F. Johnston: Why have we not heard about this before? There are three new ways you can go before a judge on this without using contempt, and the whole contempt thing has been used as a major rationale for this thing. You are the first person who has told us this. It is fascinating.

Mr. Owen: You were telling us that you think everything is in place,

that we do not need this to address the problem where the parent, usually the father, is not getting access. Yet what led up to this particular proposed legislation is the fact that so many have said the system we have is not working and they are not getting access. There has always been a problem with almost the wording and the connotation of contempt in the proceedings, where it is trying to deal with parents and with children. That has always been there. This is trying to say: "Well, it hasn't worked. It isn't working."

I know you have not been here, but for days we have been hearing from fathers who are saying it is not working. Why can this not be attempted to try to resolve that? Maybe with the help of the courts we could work out a form whereby it could be simplified to allow them to do it even without counsel. It used to be, 20 years ago—15 years ago even—that these issues could be resolved because of the way the court was structured and there were no lawyers involved, but that has changed now.

Why can this not be worked out? The present system, those who are out there tell us, is not working. So why should we not try to do something?

Mr. Slan: I guess the plain answer to that is that I would like to see the research, because I have 15 years of experience in the area and I have pooled it with other members of the Canadian Bar Association who practise exclusively in the area. I am not saying that the people who have come before you do not have very real problems; I am sure they do.

Mr. Owen: I do not think they are lying to us.

Mr. Slan: I do not think they are either. I am not suggesting that for a minute, but I would like to see some numbers. I do not think it is a large problem, but it is an important problem to the people it affects.

Mr. Owen: To the children. When there is no abuse and the children are being deprived of seeing one set of parents or grandparents, it is important to them.

Mr. Slan: I agree with you. The bill, as it is structured, does not add anything to remedies that are available to those people and it is going to cause harm to the other persons who have not made submissions in this room, who are brought into litigation when really it is not called for. Because it is making it very easy for them to litigate.

Mr. Chairman: I have a question that relates to how you formulated the presentation. You mentioned that you drew on your own experience and the experience of your colleagues in the family law field. How far afield did you go? Was it mainly the Metropolitan Toronto area, or did you canvass lawyers across Ontario?

Mr. Slan: We canvassed the entire section, which is province-wide. We had input from the entire province.

Mrs. Cunningham: There are a number of objectives or goals of this legislation. The first is to minimize the use of children as pawns in disputes between their parents; the second is to provide a speedy and inexpensive means by which access difficulties can be determined by the court, including guidelines, etc.

Those are two of the goals; I could tell you the other two, but why do you not respond to those two? Will the bill help? We are supposed to be fixing

things. Let's fix them. Will it reduce or minimize the use of children as pawns and will it provide speedy and inexpensive means to get to the courts?

Mr. Slan: I think I did respond to them before you came in, but I will do it again. It will not minimize the issue of children as pawns at all. The courtroom is not a procedure or process that minimizes the use of children as pawns; it does exactly the opposite. It encourages the children to be lined up on one side or the other.

They are continually being asked, if not by their parents then by the assessors or by the court, "What do you want to do in all this?" Parents are aware of that and often play to it. So we do not believe that it will minimize the use of children as pawns; we believe it will make that situation worse than it is now.

Mrs. Cunningham: What about the speed?

Mr. Slan: As I have been trying to say, we do not think there is anything new in the bill. You can now get before a judge by bringing a notice of motion on two days' notice in an emergency situation. The bill does not really improve on that.

Mr. Chairman: A clarification is requested by the parliamentary assistant.

Mrs. Cunningham: You do not like these answers, do you?

Mr. Offer: No, no, no. I am not displeased with the answers. I would just like to get them clarified in terms of one point, and that was the response that you made in terms of the ability to ask for a motion for mediation and supervision and that order. Is that not what you are asking for on a variation of an order, as opposed to a contempt order?

Mr. Slan: It depends on the circumstances. It depends who is asking and what he is asking for. Mediation is—

Mr. Offer: Is it not dovetailed with a variation of an order and that, in terms of enforcing an existing order we have, without variation, without having to show material change, we are dealing just with contempt proceedings?

Mr. Slan: Mr. Offer, I really think you are getting hung up on categorizing variation into one classification and enforcement into another.

These problems arise when family relationships break down. With all respect, I think it is too simplistic to say, "Well, mediation and assessment are only applicable if a variation or material change circumstances arise, but they're not applicable when an enforcement situation arises."

All that the parent realizes is that he is not seeing his child; the other parent thinks there is some justification for it, and the courts are faced with the practical problem of determining what is best for the child.

Mr. Chairman: Does the committee have any objection to Mike asking a question?

Mr. R. F. Johnston: Except that we are overtime, but sure.

Mr. Chairman: We are right on the nose.



Mr. Cochrane: I think where we are having the problem is the disagreement about—just so the committee understands where the lawyers get into splitting hairs on the different applications—is it not true that if you simply want to enforce the terms of an existing access order that has been made under the Children's Law Reform Act, recourse is frequently had to the contempt power, just to enforce the terms of the order?

Mr. Slan: No. As I said before, usually the contempt power is included in the application, but other relief would normally be asked for as well.

Mr. Cochrane: But is it not true that the reason the contempt power is used is to enforce the actual terms of the order? It is frequently dovetailed with the request for a variation under the provisions of the Children's Law Reform Act in order to bridge on the possibility for supervision and mediation.

Mr. Slan: No. If a father is denied access and he goes to court and gets a declaration from the judge that the mother is in contempt, well, so what? That is not what he really wanted; what he really wanted was to see his kids. The application may be styled as contempt under the first part of the application, but then it would go on to say he wants access on such and such a day at such and such a time, he wants to make it up or he wants a different routine of access or something like that.

Mr. Cochrane: Right, but is it not true that at the finding of contempt, assuming that order is made, the makeup time is made available in an effort to permit the custodial parent to purge the contempt; in other words, a condition is added to the order, saying, "If you comply with this condition, that is, you give makeup time, you can purge your contempt"?

1410

Mr. Slan: By and large, the judges do not even deal with the contempt aspect. By and large, family law matters are dealt with by judges on a practical basis.

Mr. Cochrane: But is it not true that that is where makeup orders surface, in the purging of the contempt?

Mr. Slan: I do not think so.

Mr. R. F. Johnston: Even if it were, it seems to have all the flexibility that you would need.

Mr. Chairman: I thank you, Mr. Slan, for coming. The committee has found your presentation most interesting and helpful.

Mr. Slan: Thank you for listening.

Mr. Chairman: I am sure there will be opportunities for informal contact. We appreciate also that your association has provided advice to the ministry prior to this.

Our next delegation is Elizabeth Leeson and she was granted 15 minutes. However, she has agreed to share her time with Mrs. Elinor Marr and Mrs. Sylvia Sheffield. So the 15 minutes will be shared among the three of them. Would you sit down before you begin speaking? Otherwise, the microphone will not pick it up.

ELIZABETH LEESON

Mrs. Leeson: This lady is Mrs. Elinor Marr; she has just applied for access to her grandson. Her son is still alive. This lady is Mrs. Sylvia Sheffield and I am Elizabeth Leeson and we are in the same position: we have experienced the death of our only child.

Mr. Chairman: Now before you begin, I mentioned that you have 15 minutes. You are going to divide it among the three of you. If you want to leave time for questions, that is fine, but it is up to you. I would caution you against making specific reference to matters which could appear in the courts or might be subject to a court ruling.

Mrs. Leeson: I am aware of that. Thank you so much.

I wish to thank you for giving me the privilege of being here.

With other grandparents, I listened to the debate on Bill 124. There was much discussion regarding fathers' rights and mothers' rights, but there was little mention of the rights of children, our future generation upon whom so much depends.

My particular subject is access of grandparents to their grandchildren. The mortality rate of young parents is extremely high, and the death of a parent is the most devastating experience in the life of a child. Grandparents who have suffered the death of their child share a grief common from one generation to another. Only they know the emptiness and sorrow which ought to be shared between grandparents and grandchild.

The surviving parent automatically acquires custody and can completely isolate the already grieving grandparents. They are denied any communication with their grandchildren. A new partner may be accepted or resented by the child. The resentment arises because he has taken the place of the deceased parent.

In some cases, this can be of mutual benefit for the surviving parent and child. In many cases, however, the opposite is in fact very common, and our grandchildren suffer sexual, physical and emotional abuse. If a person has a mean streak, in other words is a bully, there will be a victim, someone vulnerable: the sick, the young and the old. Greed is a common factor.

In depriving the communication of grandchildren and grandparents, we have each in our own generation suffered a double grief, an irrepressible feeling of loss and heartache. Birthdays, special days and anniversaries bring much pain.

As grandparents, we had a bond with our grandchildren. We shared a love understood only by us. The death itself is very hard to accept, but to deprive us of our grandchildren amounts to a complete lack of sensitivity, a cruelty beyond compare. Our love for our families was proved long before the death of our child. Since the death of my only child in September 1981, while campaigning on this issue, my sheet anchor is the love I share with my grandchildren, plus the knowledge and determination that some day we shall be reunited.

In this, I speak for all grandparents similarly anguished. We are told continually that the children will come when they are 16 years of age. The law may have been written thus, but it is an absolute fallacy. This could be

possible if an ongoing relationship had been fostered, not festered. Indoctrinated as they are for years that their grandparent does not want them and other dreadful insinuations, even that we are dead, could a child possibly wish to make contact? That is, providing our name and address were known; in many cases, they are not.

We must not be subjected to the indignity of court appearances in order to prove the love we have shared. Many grandparents have been denied access to their grandchildren, which adds insult to injury. We must be the only members of society who are presumed guilty by accusation. There is no defence mechanism against the middle generation who use every conceivable method to destroy what must be considered a special love, a love that ought to be encouraged, not broken.

A better approach can and must be found to alleviate the distrust and anger that exists in order to keep us from our grandchildren. Court appearances add to the animosity and compound an already volatile situation, to the detriment of the children.

We hear continually of overworked judges and overcrowded court spaces. In my opinion, this ought not to be treated as a legal matter but one of human and moral justice. Every child, without exception, must be aware of his heritage. Where there is no beginning, there is no future. To deny the children the right to know the name of mother or father is unjust and destructive.

There are now, in Europe, organizations of people in the 40s age group searching for the men who fathered them during the war. The men are in this country and the United States. Part of Canadian history was written when the little immigrants arrived from Britain in the 19th century. This continued until the middle 1920s. I knew some of them when I was a child. In the Dr. Barnardo and Quarrier's homes in Bridge of Weir, Scotland, from whence these children came, records are kept even now for the descendants of the little immigrants. These records include family history, photographs of siblings, grandparents, etc., plus medical history.

Medical history is extremely important. The surviving or custodial parent is not generally in possession of this information, but the grandparent with the long memory is. A great many inherent illnesses or health deficiencies can be manifested unto the second or third generation without previous symptoms.

Our heartache in the death of our child and denial of fundamental association with our grandchildren constitutes abuse of both children and the elderly. This situation must be rectified and grandparent access, irrespective of circumstances, enshrined in law. We must not be humiliated in proving our love and relationship; it is harmful and creates unnecessary anguish.

The onus must be placed where it belongs, upon the person or persons who have perpetrated these indignities, often accompanied by threats to our character and our lives. When accusations are made, accuracy must be proven, or have the courage to refrain. Until now, the law has been only on the side of custodial parent or parents.

May I speak on behalf of Mrs. Milota, the lady who was here on Monday appealing for justice for her granddaughter? This little girl must be returned to her grandmother immediately: a fatherless child who at her tender years can

be manipulated into signing papers for her adoption. The little girl is a hostage of a system much in need of overhaul.

The office of the official guardian, family services and children's aid appear to be in possession of outdated mandates, and I suggest a review.

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I have here an access order from Brampton court. The father of my grandchildren had retained a lawyer to request the reversal of a previous court order dated November 7, 1983. He had made a great many accusations against me, all untrue. The first access order was for my three grandchildren, but my little four-year-old grandson was killed on April 6, 1985. The two surviving grandchildren suffered greatly, so much grief for little children.

Negotiations were conducted behind closed doors by the lawyer for the father, the lawyer for me and one from the office of the official guardian. The same person was at the earlier hearings and he did not impress me then. They relayed the decisions to us. I was to attend a psychologist and the family was to have counselling at Peel Family Services. We had to return to court for ratification of the order. I accepted this as at last the children would, I thought, receive necessary treatment for the unresolved grief over the death of their mother and little brother.

The court appearance was October 9, 1985, and the following June 1986, a doctor of psychology telephoned me requesting that I attend. I had not seen or heard where or how my grandchildren had resolved their trauma. In the short interview I had with them in the office of the psychologist, they were at first very afraid of me. When I said with my arms out, as I had always done, "Who wants a cuddle?" they came running, both in tears. Colin, my grandson, said he wanted to see me, but my granddaughter was afraid to.

There is much more to this as the three lawyers—not the father's lawyer, but the two lawyers from the office supposed to be representing me and the lawyer from the official guardian's office—and the psychologist decided to close the case, having concluded between them that I be denied access. When I went to collect my papers, the lawyer gave me a white envelope that contained an access order dated October 9, 1985. The date it was given to me was May 20, 1987. I have not seen my grandchildren apart from the short interview in June 1986. They moved to another town and did not notify me or give me a telephone number.

I do know that my grandchildren want to see me, and they too are being held hostage. In the meantime, I have contacted two other lawyers. They have refused the case. It is an interim order, and the accusations are to this day on record in Brampton court. This is how grandparents are treated. I know of several people in this situation. If this behaviour against our children continues, this country will have so many emotionally crippled children another ministry will be required to deal with them. We, as grandparents, need our children and our children need us.

I appeal to you, ladies and gentlemen of this committee, to give our children and their grandparents a just and honest right to share the bond, which will be beneficial, one generation to the other. To ostracize even one member is to violate the sanctity of the family. Mrs. Milota and myself must be reunited with our respective grandchildren. You have the power to rectify these injustices.



The court order was handed down. You have it before you. It said, "The children shall have access to the respondent in accordance with the wishes of the children." I wrote, "My grandson was six years of age." This is what I refer to as buck-passing to the kids.

Mr. Chairman: Mrs. Leeson, do you wish to give any time to the two ladies with you or would you like to use the remaining time to answer questions?

Mrs. Leeson: I would like to make one statement, if I may. I heard some discussion the other day on the hierarchy, on the order of precedence. Nobody seemed to be able to have the answer. I can give you the answer. After the father and mother, the next relative in the bloodline is the maternal grandmother. Since our daughters are dead and we are the maternal grandmothers, we come in line right after the father. The stepmother or stepfather is not even related to the children. So that is the line of hierarchy. But if you have time, I will answer any questions.

Mr. Chairman: Do any members have questions? If not, then thank you very much for coming before us and sharing your views and the perspective you bring.

Mrs. Leeson: Thank you.

Mr. Chairman: Our next presentation will be from the Merrymount Children's Centre. Representing that organization is Jan Lubell.

Mrs. Lubell: Thank you for the opportunity of presenting this to you.

Mr. Chairman: Before you proceed, I would like to welcome you to the committee and indicate you have one half-hour to divide as you see fit between presentation and questions. I caution you against making reference to anything that might appear in the courts.

Mrs. Lubell: Thanks very much. I am just thinking that maybe I can provide a happier side to some of these situations.

Mr. Chairman: Oh, that would be a welcome relief.

#### MERRYMOUNT CHILDREN'S CENTRE

Mrs. Lubell: I am Jan Lubell. I am the executive director at Merrymount Children's Centre in London. It was during my time of being the director that the supervised access program at Merrymount was initiated and developed. I think I can say to you now that it is the largest, most formal and probably longest-running—I think we have a competition with the Lakeshore Area Multi-Service Project in Etobicoke for which is the longest-running—program in Ontario.

What I would like to do, if it is acceptable to the committee, is to give you a little sense about Merrymount, give you a little sense about our supervised access program and the way it has developed historically. I can tell you that in terms of numbers and whatever, I think we have some breadth of experience to draw upon. Then I would like to leave with you some thoughts about the value of a supervised access situation as a remedy that merits, I think, equal attention to some of the other remedies that have been given to you today.

Do you have copies of the brief?

Mr. Chairman: It was distributed by the clerk to the members yesterday.

Mrs. Lubell: Thank you. Suffice it to say that Merrymount is, in the current lingo, a flexible services model of child care delivery. We are certainly known in London, and I think perhaps even provincially, as an innovative facility, one that is at the forefront of prevention-oriented child care programs and family support programs.

In late 1984, we began in a formal way the supervised access program that we have now. That was the time when our board of directors formally said, "Yes, this will be an integral program component." It was a time when we started collecting numbers. It was a time when we started to organize it and administer it in such a way as a separate program. But I think I can say that for several years before that, we were seeing youngsters in a supervised setting. We said we were doing it experimentally. What it meant was that when certain youngsters or their families were at Merrymount for whatever reason, we developed a response to the needs of that particular family, and in many cases, that was to supervise custody and access problem situations, both visits and exchanges.

The supervised access program at Merrymount really is, in philosophy, quite consistent with the other Merrymount programs. We see it as a transition time of assistance to families. We do not see it as a static, long-time alternative to conflict. We see it as a practical, straightforward way to make happen what is supposed to happen.

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I think the interesting thing is that in London it is becoming more and more common for lawyers to refer clients to Merrymount for a supervised access program fairly immediately, either before the kinds of situations we have heard about get to court or during the time some other remedy like mediation might be considered. We found over the last year that 57 per cent of all the cases seen at Merrymount came directly from lawyers. We also found that 15 per cent came from the court, with a specific order from the court that said the visit will happen at Merrymount Children's Centre at a certain time on every other Saturday or whatever the situation might be.

To give you some context, perhaps I can tell you that in the last fiscal year, which finished March 31, we saw 138 families during the year, or 205 children—these are different families—in either supervising visits or supervising exchanges. Remember that we do not see the family once; we probably see them every other week or every week or whatever the case may be.

From the beginning in 1984 when we first started making this an official program, we have seen 345 families or 493 children involved in those families. We are presently handling about 150 to 160 families a month, either in visits or exchanges.

This may sound big and it may sound small. I think it is large enough to give us an experience with a sufficient population that I can begin to tell you some of our observations and perhaps have some thoughts for you. It is capped at the moment. I do not really want to make an issue about this, but as you know, there is no funding available from either the Ministry of Community and Social Services or the Ministry of the Attorney General, and our board of directors is solely funding this program. They can fund it only to a certain

point, so we are quite limited in the number of youngsters and their families we can see. That is why it sounds small or it sounds big.

We are as creative, I guess, with our organization and administration as we are with our programs. I have to tell you the visits are extremely well supervised, very professionally done. We do it through the very creative use of placement students and volunteers and borrowing people from other programs. That is the way it is usually done. I can tell you that the visits are extremely well supervised and we think have shown some very positive results.

I think all of us know that one of the most critical tasks for post-separation families is to establish the mechanism whereby the visits will happen. I think what this committee has probably been hearing about are all the visits that do not happen when they are supposed to happen.

In Merrymount's experience, by offering a very straightforward, concrete program in a setting that is nonthreatening, that is very accepting and that is child-centred, we find that actually the people do come when it is ordered by the court or when a lawyer suggests to families who are having difficulty that while they are waiting for the mediation route or while they are having trouble setting up something, "Why don't you try going to Merrymount?" The way we operate things is to say, "Come over and have a look around." Usually when families and their youngsters get there, they discover it is a very pleasant and very welcoming place. We take away a lot of the fear of the visit.

For the custodial parent who is nervous about leaving the child even in a supervised setting, we provide a separate room where the parent can stay during the visit, with the understanding that parent is not visible or is not to intrude in any way. We have all sorts of logistical things where a parent drops off a child 10 minutes before the other parent is scheduled to come to give him or her a chance to get away.

I cannot say we have not had our incidents out in the parking lot. I cannot say we have not had the noncustodial parent who waits across the street and tries to make a problem. But I will say that in the large number of visits that occur, this is minimal. We handle it in a very straightforward way and I think we have had a real minimum of problems.

In many ways, we ensure good behaviour and we ensure the visits happen. I do not think I look like a policeman or very scary, but I am the kind of person who, if a noncustodial parent were to come in having been drinking or on drugs or whatever, and that happens occasionally, would be the first one out in the hall saying, "I don't think it's a good day for a visit." I do not think I have any legal right to do that, but I think that is the kind of atmosphere that prevails and that we have made it a very comfortable place for our families to visit.

The visits do several things. We have heard a lot about legal theories. If we look at what we know about prevention programs, if we look at what people know about crisis management, you will know that initially after separation, this very time when they are trying to get the arrangements put together is a time of the most heightened emotions. It is a time when it is most difficult for people to set down logical sorts of responses.

What the program does, at that time when people are most vulnerable and when they are most emotionally involved, is set a routine in place. This may sound very simplistic to you. The only thing I can say is that it really does work; when a family begins a routine and begins to see that nothing



particularly terrible happens when they visit every Saturday afternoon or every Tuesday evening or whatever, that there is staff around who can supervise the visit, then the custodial parent stops fearing for the safety of the youngster. The noncustodial parent, very interestingly, often does not even know what to with the child. If he has not seen the child over some time, he is very comforted by the fact that we have appropriate-age activities around, that there are staff members who can assist him in a visit. Really, we have the best interests of the child at heart. Our thought is to make the visit as constructive for the youngster as possible.

In answer to the three women who were just here, it does not sound like a lot but I can tell you that our statistics indicate that about two per cent of the access orders are to grandparents. We also find very often that when the noncustodial parent comes to visit, he will bring his parents or a favourite uncle or whatever; we certainly allow this, we certainly welcome it.

If we ever need to find a way of raising money for our program, I suggest a McDonald's franchise right at Merrymount because that is another thing we have found works well for our families. We encourage them to bring a picnic lunch. We encourage them to bring Kentucky Fried Chicken or whatever they want to bring. It sets into motion the kind of atmosphere and the kind of environment which leads to constructive visits for the youngsters.

I have talked about the importance of routines. I have talked about the importance of setting something in place at a time of heightened emotionalism. In truth, after several visits, let's say six to eight visits, the high emotional stress in the family begins to wane, as is normal. Then at that point, we can begin to talk more logically about the kinds of arrangements that can be made.

In many cases, we have found that what starts out to be a two-hour visit every other week or every week can in time become an exchange. In other words, the parent does not need to visit under our watchful eyes. The parent can take the child away for a couple of hours or for the day or whatever. Often this then goes into a weekend exchange. Pretty soon, our hope is, the family will be able to find a way of doing this all by themselves without the requirement of another facility.

In fact, that is what has happened, that the length of time in the program is variable. Sometimes people will leave and come back again. But that is the sort of process we envisioned would happen and has in fact happened, that we start out with greatly supervised visits, move to something less intrusive, that we go to exchanges and then the family is happy to and able to do things on their own.

There is certainly inherent a degree of parenting education, if you will. In any situation like this, there is a good deal of modelling which goes on from the staff members. The parents learn from one another. We do not have the luxury of having one family at a time. We found we can handle probably six or eight families at any one time, bearing in mind the necessity for good supervision. We find the families learn from one another. It is a normalizing experience. It is good for the kids and it is good for the parents.

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Two more points and then I will stop. One of the things we began as an adjunct to this program arose out of the needs and the wishes of some of the fathers particularly. There was a real gap in their knowledge or degree of



comfort with what to do with the kids and how to plan a constructive visit with them. We set up a group; we have had several groups going. We started out with sort of a four-session group, where we would get some speakers in.

More recently, we have had something called Weekend Fathers, which is a parent group designed just for fathers. We usually have between 12 and 15 participants. It is run by a couple of Merrymount Children's Centre staff members, not the supervised access person. It has been extremely well attended and well liked by the dads.

They talk about everything, from simple things like what to do with their child in London on a Sunday afternoon to how to plan for a longer visit over Christmas holidays. I guess what I would like to do is give you the feeling of something that is very practical, that really meets the immediate needs of the persons and helps them towards a constructive visit.

The last thing, I think, bears note, and at some point hopefully I will have more information for you: We are stymied only by our inexperience at doing good computer programming. But this past year we wanted to look not just at numbers in the program; we wanted to look at inequality of growth or change among the participants. We had a feeling, from observation and from the reports of others in the community—lawyers who use our program regularly, people at the custody and access project in London, family court judges, etc.—that the program was serving a useful need.

What we wanted to do was to develop a questionnaire we could give to the parents utilizing the program to see if in fact they noted any changes or any growth potential. We have 90 questionnaires back. We were very fortunate in having the assistance of some law students from the University of Western Ontario, who were in a family law course. We tried to ask a number of questions about the parents' own backgrounds, about how they are handling this particular situation and about how they see things going.

The interesting thing is, and I have them listed in here, that the majority of our clients in this particular program have a high education level and tend to be employed. When we started out, because Merrymount sees a lot of single-parent families and a lot of financially disadvantaged families in our other programs, we had the feeling that this was a group that was going to be particularly appropriate. Certainly, we continue to serve this group, but we also have a large number of parents who simply cannot get things together but who do have a degree of education, employment and all those other things.

Most parents, interestingly, felt that their interactions with their ex-partner remained about the same or have improved slightly, but at the same time they clearly say their relationships with their youngsters have improved markedly. If we take to heart the kind of sobering information in Judith Wallerstein's latest book, *Second Chance*, and if we look at what children need in a preventive sense, we will know that good relationships with both parents is something that is important to the children's mental health for the future.

Most of the parents—all but one parent—said they would recommend the program to other people, would come back and had found it to be a very beneficial experience. I think I will stop and take questions.

From our perspective, though, based on the large numbers of people we have seen and the many years of experience, we are confident in saying that this is an appropriate remedy for families. It is practical, it is straightforward and lets us see a lot of people at much lower cost than a lot

of the other remedies suggested. I think it is a good prevention-oriented practice option. I think we find that in fact beneficial therapeutically, if you will, as some of the more involved interventions that happen. Clearly, we think the program needs to be well organized and well managed with, hopefully, some money so we can do more of it. In London we find it serves a very useful purpose and I would think it could be transferred to other settings.

Mr. Chairman: Thank you for a most interesting presentation; as you said, a change of tone from what we have been hearing. It is good to hear positive initiatives such as the ones you have taken.

Mr. R. F. Johnston: I appreciated the report a great deal. Yours plus that from Access for Parents and Children in Ontario of the Lakeshore Area Multi-Purpose Project yesterday really makes me very sorry that our government has not moved more dramatically in terms of setting up this range of flexible services as envisaged in the Child and Family Services Act in more places in the province. We just got a report from our staff on the very small number of such programs that are operating. It is very disappointing to see. We have the cart before the horse in terms of what we are doing here.

Yesterday, LAMP gave us some statistics which you did not include in yours; I went through it and had a look for it. They did an interesting chart looking at the number of their supervised access people who had moved to unsupervised access. I presume from what you are saying about exchanges and that sort of thing increasing that that takes place with your group.

Mrs. Lubell: That is the process, yes.

Mr. R. F. Johnston: I was wondering if you had broken that down statistically in terms of the number who are now, as she called them, success stories, who are now managing to stay on unsupervised access. In her case, she said almost all of those who had gone to unsupervised were still unsupervised at this stage.

Mrs. Lubell: In truth, I can probably count on one hand the numbers who have come back because it has not worked out or because a different circumstance has arisen. We have a mother in the psychiatric ward who finds visiting at our place is better, and because they had prior experience that worked out to be better. I do not have the numbers with me, but I think we would find our experience about the same.

Mr. R. F. Johnston: What about the other thing which was not exactly dealt with by what you said: the number of cases which do not come back to you but maybe end up in court again? Do you have any idea what those numbers are?

Mrs. Lubell: I really do not. Sometimes they will go back to court for what we could call success reasons, good reasons, because while it was stated that it must take place at Merrymount or whatever, we have been able to say that they have been able to move into something else or that other arrangements are equally appropriate.

We have had situations where we have suggested to the parents that they do go back to court. I will probably be killed when I get off the stand here, but a lot of people see this as a women-versus-men issue, the fact that this is to give men greater access. We have seen some women do some pretty terrible things to men in our program as well, and I think sometimes we have suggested it is appropriate to go back to the lawyer and see about some other enforcement issue. Certainly we all know the parents do terrible things to one

another and that the children are the ones who really suffer from the situation.

Mrs. O'Neill: You suggest there is absolutely no government funding for your program. Do you do this by community fund-raising? Are there programs within Merrymount that pay for themselves?

Mrs. Lubell: It is a little more complex. Mr. Sweeney and I have had discussions. I told him I was very disappointed when he chose the Lutherwood project to receive pilot funding. We were hoping it might have been our program. That is the only one receiving direct government funding. Actually, everyone came down to London and took our model to Lutherwood. He knows I was not too pleased.

The way we fund ours is through the generosity of our board of directors. Merrymount has its roots in the old Protestant Orphans' Home in London, so there is some private foundation money and the board of directors funds it. We do receive some other things. For instance, Canada Trust, one of the banks in town, this past Christmas had its employees' fund phone and ask if there was anything in particular we needed. They gave us a very nice donation which let us buy some activity items and toys.

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Mrs. O'Neill: So there is some stability there.

Mrs. Lubell: There is stability only in that our board of directors has felt it is such an important piece of what Merrymount does as a family support service, but there is no funding from the Ministry of Community and Social Services or the Ministry of the Attorney General. We really tried just about everything.

The problem with having it only board-funded now is that it does put a cap on it. They can fund it only to a certain point. I am a very creative budgeter; I am known around town as a creative budgeter. I think we are doing a lot.

Mrs. O'Neill: I am sure that must be true. Do you have any outside evaluation studies or have they all been—

Mrs. Lubell: Of this program?

Mrs. O'Neill: Yes.

Mrs. Lubell: One of the things we have tried to do, and we did get some outside assistance, was develop this questionnaire. We are trying to put a computer program on so that we will be able every year, let's say, to check growth and change and whatever. I am sorry that at the moment we are not quite at that point where I can give you definitive things, but, hopefully we will have that.

Mrs. O'Neill: My last question has to do with the fact that you have a very small—

Mr. Chairman: We have two more people left. If we have time, we will come back to you.

Mrs. O'Neill: Okay, sorry.



Mrs. Cunningham: I hope you realize we have yet another well-versed and experienced person from London, except this time this is my former colleague, so I am really happy she is here today. I hope you will be listening very carefully, as usual.

Mr. Chairman: You have heard my complimentary comment.

Mrs. Cunningham: I know.

In looking at the objectives of the bill—and really, I think we are all here to do the best we can when it comes to achieving the objectives or the goals of a bill such as this—the first one is to minimize the use of children as pawns in disputes between their parents.

There are four here. That was the first one I wanted to talk about. The other one was to emphasize that the best interests of children are met through ongoing opportunities to learn from both parents, as is each child's right. The next one is to provide the court with enforcement tools other than jail sentences and fines when enforcing access orders.

It seems to me, as you were talking and describing the program and in the brief you put together, that those three objectives are probably met more through this program than what we have been able to understand, at least so far, through the bill itself. I wondered if you would respond to that.

Mrs. Lubell: As you mentioned the other two goals to the former speaker, I was thinking to myself that one of the things this program does—and I stress too that it needs to be a well-run program. I am not talking about a program that is just meeting any old place with any old person kind of watching. I am talking about something which is well managed and with clear intention. I think that is the thing about all of our Merrymount programs. It looks very easy and very comfortable and very accepting, but there is always a clear intention behind everything.

We certainly do minimize the chances of the child's being a pawn, because for one thing, as I mentioned, we ensure better behaviour on the part of parents. They come in and when they do greet one another, somebody is standing there. There is less chance for a father to be screaming in the middle of the lobby; there is less chance for a lot of these things to be happening.

I think it also puts into place something that is very concrete and practical and nonthreatening. The thing is that you can sit and talk all you want to but you have to do something, and once you show people that something nice does happen, when the custodial parent can see that the child can have a visit with the noncustodial parent which is supported by good staff, where the activities are appropriate, where the conversation—If we overhear a father pumping a child about, "What did mom do?" or "Who's living at home with you now?" we are very quick to get in there with, "Did you tell dad about your play at school yesterday?" We are very quick to do those things, which keep it constructive and age-appropriate and which keep it child-centred.

I think in all these funny little ways, which sound so silly when you talk about them, there is a real intention of ensuring those things. I stress too that for all that it costs—certainly all programs cost a lot of money—it is a cheaper way in terms of staffing, in terms of the cost of mediation, the cost of legal services, the cost for this and that. It is a much cheaper way of seeing a whole lot of people. For those people who do require something



else, fine. But I think to write something for everybody into law, which may not be appropriate for everybody, is not a wise thing.

Mr. Chairman: If we can get one more question in? Mr. Daigeler?

Mr. Daigeler: First of all, I also want to thank you for quite a refreshing presentation and also a community response to what I think is an obvious social need.

I do wish to ask you, though, the same question that I asked of the Lakeshore Area Multi-Service Project group yesterday: whether you have made application to the Trillium Foundation. I ask that question because I tell you quite honestly, other than Mr. Johnston, I have some serious doubts as to whether we can continue as a society to government-sponsor some of these programs, which I think are very good.

Do not get me wrong. I think from the description that you gave that there is an obvious need. You are doing great service. But I wonder whether it is not really the responsibility of the community itself, and the way you are doing it actually right now, to find the funding for that service rather than to put more and more on government, and as you know, then in the end have a taxpayers' revolt.

It sounds crass, but these are also the realities that we have to deal with. So I am just wondering whether you have applied to the Trillium Foundation, which—

Mrs. Lubell: On a personal level, I guess the joke is that I am a capitalist who is a social worker. So that, yes, I will tend to agree that there comes a time when the government cannot support everything, but I think the government does make choices.

I think sometimes we have to look and say: "Where is the money going? Where could the money go otherwise that could be perhaps better used or where it would be a more"—yes, let us say a better use, because there are priorities to set and there are choices to make for government funding.

In our case specifically, no, we have not approached the Trillium Foundation. For instance, as I have mentioned, we did receive a donation at Christmastime from another source. Our board of directors is providing dollars.

We do charge also. This is something I did not say. We charge what is called "a parent contribution." We do not have barriers. It is not meant to be a barrier fee, but it is meant to be a parent contribution. What we do is charge something and we try to split it between the parties. Of course, some pay, some do not pay. Some people say, "Why should I pay to see my very own child?"

The amount of money coming in is minimal, but we do build that in, which goes along with a little bit of the philosophy that you are saying, because we recognize that there is a responsibility among all of us. Parents do get an ongoing sort of account card with us.

The other thing we have begun to do is that when lawyers ask us for reports, we are certainly beginning to say, "Hey, this is taking us a long time to write." Maybe we will start to charge some legal fees for that too.

So, I think, yes, in philosophy, I tend to agree with you and I think we have done this in some small measure.

Mr. R. F. Johnston: They will just pass it along anyway.

Mr. Chairman: Thank you very much for sharing the benefit of your experience with us.

Mrs. Lubell: Thank you.

Mr. Chairman: The next presentation is from the Emily Stowe Shelter for Women and Children in Scarborough. Appearing on behalf of that organization we have Sharon Raines and Debbie Chiasson. Welcome to the committee. You have one half-hour to use as you see fit between presentation and questions from the committee. I would caution you against making reference to matters which may be in dispute before the courts.

#### EMILY STOWE SHELTER FOR WOMEN AND CHILDREN

Ms. Raines: Thank you. Good afternoon. We would like to thank you for giving us this opportunity to speak before the committee today.

Ms. Chiasson: Thank you. Good afternoon. As an agency working with assaulted women and children in this province, we believe it is extremely important that we have this opportunity to address this committee regarding Bill 124.

This bill, if passed, could have devastating effects on the women and children who are forced to utilize our service. The implications of this bill could seriously jeopardize the safety of abused women and children.

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The Emily Stowe Shelter for Women and Children is a 30-bed shelter in Scarborough. During the past year, 130 women and 169 children used our shelter; 57 per cent of these women were accompanied by their children. The women who did not return to their abusive partners would frequently turn to the judiciary to resolve disputes around custody and child support.

Our shelter provides short-term and emergency crisis counselling for the resident women and children as well as outreach to those in need within the Scarborough area. We provide court support to our residents and ex-residents and strive to increase awareness around the issue of wife assault through active public education. We have made the following recommendations.

The first is to table Bill 124. The court has the power under subsection 39(2) to remedy access denial difficulties in the few instances where they arise. There has been no research in Ontario that we are aware of to determine that there is a serious problem of access denial.

Our second recommendation is that, in the event Bill 124 is not tabled, we feel it is imperative that women and children who have been abused by a violent husband and father be exempted from its provisions.

Rationale: We have identified and analysed sections of Bill 124 which are of particular concern to the families that have been victimized by a violent partner.

The first is mediation. Mediation, as a principle, rests on the assumption of equality in terms of financial resources, power and freedom of expression. In the case of women who have been victims of abusive mates, there

is a tremendous imbalance of power. Enforced mediation between a woman and a partner who has terrorized her and her children is in effect brutal systemic victimization.

We insist that women who have been victims of wife assault be exempted from this process. Assaulted women must have direct and expedient access to the courts. They need orders, not agreements, to protect the interests of themselves and their children.

Restraining orders are frequently necessary to ensure the safety of a family which has been terrorized by an assaultive partner. Although enforcement of these orders is at times difficult, they provide a mechanism for relief from ongoing harassment as well as promoting a sense of safety and security for the victims. One Ontario study has actually shown that 57 per cent of women who used conciliatory processes suffered further abuse after separation. This stands in marked contrast to the 35 per cent figure which they quoted for women who utilized the adversarial legal system.

Support orders are another contentious issue. Although access denial has not been identified as a problem in Ontario, support default has. Support amounts and means of payment may be specified and agreed upon in mediation; however, this is not equivalent to the protection of a court order. An Albertan 1981 study of the Institute of Research and Reform found "no statistical relationship between fathers' satisfaction with access to their children and the rate of maintenance default." Mediation would effectively deprive the custodial parent of recourse through the support enforcement office when the noncustodial parent defaults on payment. This support is essential to a single parent living in poverty due to social injustice.

Mediators are neither regulated nor standardized. They are not required to have training in identifying abusive partners or in issues related to wife assault. Thus, where either party in independent interviews indicates that violence or its threat is an issue, a referral should be made to the judicial system for settlement. Mediation should never be permitted in cases where wife assault and child abuse have been identified as issues. Abused women in mediation with their abuser cannot freely negotiate for equitable agreements due to the ever-present threat of retaliation against themselves and their families.

Duty clause: The "friendly parent" rule within the Divorce Act may already serve to silence women regarding abuse to themselves and their children in an effort to appear co-operative and not risk the loss of custody. The duty clause essentially introduces a similar threat in terms of access enforcement. This clause may subvert rather than serve the best interests of the child. Linda Girdner, herself a mediator, states:

"If the less powerful party does not agree to a settlement in mediation, he or she risks being labelled unco-operative. This has the potential of leading to a new way of blaming the victim, and subordinating the needs of the children to the desire for parental compromise."

It is our belief that continued relationship with both parents may not always be in the best interests of the child. In fact, where a partner has been abusive to his wife and has thus also abused his children, emotionally if not physically, we would recommend that access be supervised.

Best interests of the child: One factor which must be considered when assessing parenting ability is the predisposition of physically and

emotionally abusive partners to abuse their children also. There is research to substantiate that even if children are not directly physically abused, living in a home where abuse is occurring and witnessing this abuse is equally damaging to the children emotionally.

Abusive partners are poor role models who lack moral judgement and personal control in relation to those they can abuse, women and children. Male children who witness violence are at a high risk of perpetuating this abuse. In an American study, it was found that male children in violent homes are 1,000 times more likely to use force to problem-solve. Measures must be taken to protect abused women and children from further harm.

An assaulted woman leaving her home and moving to a shelter is acting in the best interests of her children. She should not be penalized by the judiciary for protecting herself and her children. Although a shelter is not a permanent, stable residence, it is the only type of facility which can provide the crisis counselling necessary for the wellbeing of the family.

Frequently, children who see their mothers as helpless may conceal their own abuse. It is only after the children are removed from the abuser and are able to feel some degree of safety that they may disclose the secret of physical or sexual abuse to themselves.

Ms. Raines: Domestic violence: While it is appreciated that domestic violence has been recognized in subsection 24(3), it is important to note that verbal and emotional abuse, which experts agree are at least as devastating as physical abuse, are not included. Custody hearings are often heard long before criminal charges are heard in our already backlogged courts.

Judges, official guardians and other professionals assessing the needs of women and children need to be educated around the issues of wife assault and consequent hardships which must be endured by victimized families. Children's fears, concerns and wishes must be heeded in decisions around access and custody where there is a violent father to contend with.

Ability and willingness: "Ability and willingness of each person seeking custody to provide the child with the necessities of life and to meet any special needs of the child." On average, a woman's income decreases by 72 per cent after divorce and a man's income increases by 43 per cent. It is unfair to penalize a woman for this social injustice.

The best interests of children should take into consideration the ongoing discrimination against women in the community with respect to circumstances beyond their control, such as housing shortage, inflation, lack of day care subsidies, employment inequities, wage disparity and other social factors.

Supervised access: Before any bill which makes provision for supervised access or legitimate refusal of access is considered, facilities to monitor and validate these provisions should be established. At present, the only program in Metropolitan Toronto to provide supervised access is being forced to close by lack of funding by the Ministry of Community and Social Services. In 1987, an outreach project funded by the Ministry of Community and Social Services and administered through our shelter identified that one of the largest gaps in service in our area was the absence of supervised access and pickup and dropoff facilities.

Due to demands by assaulted women who used our services, our shelter has



attempted to provide a pickup and dropoff facility in a limited capacity. We have neither the funds nor the staff to adequately provide such a service. Consequently, we are placing our staff and residents at risk of men who are violent. Violent men remain violent even after the victim is removed. The following is a case history of one of our attempts to provide this service.

Due to a court directive, Diane started giving access to her estranged spouse to see their infant daughter through the shelter while she and her child were still residents of our shelter. Jim was verbally abusive to the shelter staff every time he picked up or dropped off the child. On numerous occasions he refused to return the baby to the staff and would only give her to her mother, stating that he was not turning his baby over to strangers. Jim seemed to feel access to his child included access to and control over his wife.

Diane had to have legal papers drawn up so that Jim would turn over the child to a staff member. When Diane left the shelter, access continued. On several occasions, Jim phoned to cancel or change access 15 minutes before the visit. Diane, who was travelling by TTC, had already left home and could not be warned about the cancellation.

Jim would frequently phone the shelter three or four hours before the visit was over to complain that he or the baby was ill. When we were unable to contact Diane, and explained to Jim that we were unable to care for the child at the shelter and that he should return her at the agreed-upon time, Jim would bring the child back to the shelter anyway, having no regard whatsoever for who would care for his child.

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On one occasion when the child was ill, Diane called Jim 24 hours before the visit to cancel. Jim demanded and received a doctor's letter. Diane had to expend considerable time, energy and an hour from her job to obtain this letter. Diane was not compensated in any way.

Denial of access: Bill 124 makes provision for legitimate refusal of access. However, in the case of families in which wife assault has taken place, we believe an objective intermediary is essential to substantiate and validate custodial parents' concerns. It is our experience that women are not always believed and in fact may be seen as unco-operative towards former spouses when raising very real concerns. Third-party intervention would provide documentation and substantiation of legitimate denial of access. This would prevent unnecessary backlogs and perhaps assist with evidence being collected in the short period of 10 days.

As stated earlier in the paper, relief for access denial exists under current family and children's law. We have to amend the assumption that access to both parents is always in the best interests of the child. The children's wishes are not taken into account and are usually not sought at all. The judiciary and the official guardian should be trained in issues of wife assault and should do more than consider and dismiss wife assault when determining access.

Who determines reasonable grounds in the case of physical or emotional harm or impairment? How do you define "impaired"? How many is "numerous occasions"? What are "reasonable expenses"? The provisions of this section are extremely vague and loosely worded.

It is interesting to note that access is refused in approximately one

per cent of cases. Men are usually the ones who do not exercise their arranged visitation. Paradoxically, approximately 75 per cent of support orders are in default and our new enforcement agency is so backlogged that orders have been with the agency for over a year without being placed in the hands of an enforcement officer.

Section 35a, oral evidence: In the case of assaulted women, this section should be waived completely. An assaulted woman terrified by abuse and threats against her and her children should under no circumstances be required to face her abuser and give oral evidence. Signed affidavits should suffice. This will also require longer than the 10 days designated in Bill 124.

In conclusion, we would like to reinforce our request that assaulted women and children be exempt from Bill 124.

Mr. Chairman: Thank you for your presentation. We have questions from some members.

Mr. R. F. Johnston: I am glad we could have somebody from Scarborough here; we are pleased to have you. Stowe has been doing great work for years.

Rather than getting into matters that have been raised by many other groups, there is one statistic you have used that I do not recall being raised before and I wonder if you could tell me where it comes from. It is on your last page, "It is interesting to note that access is refused in approximately one per cent of cases." Where did that statistic come from?

Ms. Raines: It was from a magazine, Chatelaine, in 1987, I believe.

Mr. R. F. Johnston: So you are not sure exactly where. Can you find out for us? I was asking our research staff member if she had seen this statistic and she had not, so if you could just find out what Chatelaine's reference was for that, that would be useful. If you were to let the clerk know, that would be the easiest way for members to be apprised of this.

The question has arisen a number of times around statistical backup for a number of things. Even on that matter of access refusal, we have had no information. Whether that is a Canadian statistic, an Ontario statistic, that kind of thing, would be helpful for us to know.

Mr. Carrothers: I am wondering if I could turn to your comments on the duty clause which you made on page 2. You made a statement in there that the clause may subvert rather than serve the best interests of the child, and I am struggling through these hearings to understand. That is a point that has been made by many groups and, unfortunately, I am still struggling to understand it. That may be my fault, not yours, so I want to get you to expand on those comments.

You have commented on the "friendly parent" rule in the Divorce Act, which of course is a rule that mandates almost—it says that one should maximize contact and that the willingness is supposed to be taken into consideration when dealing with custody. But clause 27(4)(a) is quite different. It only comes into play once you have gone through these determinations of access and custody. As I read it, it is more saying, "Now that we have determined the issue of access, the two parents have an obligation to try to make that work." That is what it is saying. In other words, it is not incorporating any judgement that there should be access. It

is now saying, "Once you have determined it, come on, guys, you have to make it work."

Therefore, I am trying to understand why you make that statement about it. It certainly seems to me, in looking at it, that it almost seems like motherhood and a useful statement to make. You are making it an obligation on the parents to make this arrangement work. I would just like to understand why you feel it might work an injustice there.

Ms. Raines: Generally, the arrangements are not made necessarily with everything agreeable, especially with an assaulted woman. Sometimes she is afraid, is intimidated and does not necessarily express what her needs are and may not even identify abuse. So what happens is that sometimes orders are made, the father has access to the children and the mother is subsequently abused or the children report tales of abuse.

Mr. Carrothers: But our changes to section 24 here will bring domestic violence into the range of things specifically to be considered when dealing with custody and access. Is that not really answering the problem you are setting up here? In those hearings, which are before this section even arises, before it even comes into effect, we are now amending the Children's Law Reform Act to say that domestic violence has to be taken into account. The history is one of the items one now looks at, and I think it is incorporated—I have not got it right here in front of me—in terms of the ability to be a parent.

With those two changes together, are you not making sure the issue you are raising, which I guess is that the custody or access perhaps has not been decided properly because of this, has been taken into account?

Ms. Chiasson: I think the domestic violence consideration within this bill is very good. I do think, with the duty clause of both parents being required to encourage access with each parent, that it is not necessarily always a good thing, if the child has been abused by the spouse as well, unless you have a supervised access program.

Mr. Carrothers: That I understand. I am hearing you say the clause is encouraging access, which I just do not see it doing. It is saying that once you have decided access is to be there, now the parents have an obligation to make that arrangement work, which to me is a very different statement. As I said, maybe I just misunderstand it and have a mental block here, but to me that is a very different statement than saying you should encourage access at all times. I am just trying to understand the point you are making.

Ms. Raines: I think it is very difficult for an assaulted woman to encourage access when she may have reasons to believe access is not in the best interests of the child.

Mr. Carrothers: That I understand. I guess I am hoping or feeling or suggesting that perhaps the changes to section 24, which is the range of things, among others, that are considered when you look at custody and access, would now very explicitly cause those issues to be dealt with and perhaps redress the imbalance you are speaking about in terms of not being willing to talk about it or at least attempting to redress it.

Ms. Raines: I would see that domestic violence has been identified, but also what we have identified is that judges, official guardians and other



professionals may not necessarily have the sensitivity or awareness to the issue of wife assault and the consequent hardship.

Mr. Carrothers: That I understand. That may be another kind of problem we need to address, which it seems to me is, do those who are making the system work understand the implications? It would seem to me you could separate those. That is a separate issue that would be dealt with separately, and when we craft this law, maybe we need to make sure that happens at the same time this law comes into effect.

Ms. Raines: I would say that prior to the law coming into effect, people should have sensitivity to the issues if they are going to be dealing with it.

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Mr. Offer: As so often happens when you are on the list third or so, some of your initial questions have been asked. Luckily, I have another. I would like to thank you very much for the brief. I think it was very well done.

There is one thing I would like to bring to your attention. You bring forth an important point in your brief when you talk about the restraining orders necessary for the safety of the family. One of the amendments we are proposing in this legislation is that where a court does make such an interim or a final order, it will also be able to restrain the person not only from molesting, annoying or harassing the applicant, but also from communicating with the applicant. So I think the point you have made is very well taken. section 7 of the bill does attempt to come to grips with that problem and I would like to thank you for the submission.

Mr. Chairman: Is there any response to that before I go to the next question?

Ms. Chiasson: We are extremely concerned that assaulted women have direct access to the courts. It is imperative for them to be able to get support orders, custody enforcement orders and access orders.

Mrs. Cunningham: I was just sort of thinking, as Mr. Carrothers was asking the question, that we have already been told a number of times that this bill does not add to the remedies. Quite frankly, regarding the clause he was referring to, we already have heard from many people that those powers are already there in the existing act. I think that is what you are saying, as well.

Mr. Carrothers: The duty is not there. That is not in any statute right now.

Mrs. Cunningham: It certainly is from the Canadian Bar Association's point of view.

Mr. Carrothers: I do not recall him saying that clause was in the statute. Excuse me, Mr. Chairman, I should not jump in like that.

Mr. Chairman: Thank you, Mr. Carrothers.

Mrs. Cunningham: The people coming here now say that particular remedy is already within the present law. If someone wants to give me some



information otherwise, that would be fine, but that is what I believe at this point in time.

If it does not add anything new, I was just curious about it, given the nature of your shelter. By the way, thanks for coming and sharing with us because I think what you are saying is what other people are saying, that we need more properly supervised access programs with the right kind of staff. I am just guessing, but I would think that if you had a choice of location for the access for the visits, it probably would not be at the shelter itself, so would you tell me why it is at the shelter?

Ms. Chiasson: Because there is not a supervised access program in Metropolitan Toronto that we can use at this point. Over the past year, we have tried to get women into programs at the Lakeshore Area Multi-Service Project services and it was no longer taking people. Unfortunately, the funding has been cut there, to the best of my knowledge.

Mr. Jackson: It is also at the other end of the city.

Ms. Chiasson: It is also at the other side of the city; that is right. Ideally, it would be in central Toronto somewhere. It would serve as a supervised access facility as well as a pickup and dropoff point where some of those legitimate reasons for denial of access could be validated, because often people are not believed. "You showed up drunk." Well, who is to say?

Mrs. Cunningham: That is right, and that to my way of thinking is the problem with this act. Who is going to believe whom? In the supervised settings, I will bet that you will have very few people who miss their appointments and still retain their privileges. Certainly, that is part of it, is it not, to document it? When, after all, people miss a visit with a child, the one who really suffers there is the child who is looking forward to it, and the staff such as you are building them up and getting them ready.

I really admire what you are doing. I think it must be under very challenging circumstances that you have a successful program, given that the objectives of both programs are somewhat different from time to time. I really thank you for coming and sharing.

Mr. Chairman: We have time for one more question within your time allotment: Mr. Jackson.

Mr. Jackson: My question has to do with the statistics you quote in your second to last paragraph and Mr. Johnston's reference to one per cent of cases with access refusal. I am interested in your concern about the 75 per cent of support orders in default and that the new enforcement agency is so backlogged that orders have been with that agency for over a year without an enforcement officer.

One of the concerns I have about this bill, and I want to know if you share this concern as well, is that we know that two years ago enforcement for support payment was high on the agenda and that was considered positive, given that abuse of that was rampant and somewhat extreme.

We now have the other shoe dropping, which is access to the children and enforcement of that, and a system of refereeing, albeit through the courts, in order to do that. Yet as I read this bill, I get a sense that the courts are to put a higher value on the issue of access to a child than they do on ensuring that the necessary resources are there in order to make sure they are

clothed, housed, fed and that their nurturing can occur in that kind of environment.

I am somewhat disturbed by it. Maybe I am misreading the bill, but do you get a sense of that, in terms of the bill suggesting to the courts that the primacy here in all these matters is not child-focused, as it suggests, but more of an egalitarian approach between the two former partners? Could you react to that?

What you are basically saying here is that if we are so badly backlogged with support orders, and that in this bill with its 10 days, fast-tracking, verbal evidence only, you are in, you are out and access is granted, that if that is fast-tracked but the support is not, then somehow we as politicians and the courts have decided which is in fact more important. Could I get a comment from you or a reaction to that.

Ms. Chiasson: Although we agree access is extremely important for both parents, I think fulfilling a child's basic needs is more important. They need to have the basic things they need to survive: their food, clothing and shelter. I think the nurturing they would get from both parents is important as well, but when it is an abusive parent, it should be under a supervised setting so that they do not endure further abuse during those visits.

Mr. Jackson: Just briefly, was I to interpret it—if the reforms of two years ago have resulted in tremendous backlogs, does that bode well for this legislation when it becomes law? Will we experience similar backlogs and to what extent are we to anticipate that?

Ms. Raines: If it becomes law, we see that there would be backlogs unless you are going to bump all other cases that are already before the courts out of the way to make room for—

Mr. Jackson: We are hearing that from many of the lawyers involved in family law. Thank you very much.

Mr. Chairman: Thank you for coming to the committee and taking the time to prepare the submission you have made. We appreciate the effort.

Our next presentation is from Diana Majury. Welcome to the committee. You have 15 minutes. You may leave some time for questions at your discretion.

#### DIANA MAJURY

Ms. Majury: Thanks very much. I am very happy to be here with you this afternoon. I am a law professor at the University of Western Ontario in London. Just to situate myself a little so you understand where I am coming from when I speak this afternoon, my graduate work was in the area of sex discrimination and equality, equality theory and working with the Charter of Rights and Freedoms, looking at what equality might look like in this post-charter era.

I do quite a bit of consulting both with government and with organizations on the issue of equality. I work quite extensively, for example, with the Women's Legal Education and Action Fund in developing cases for litigation under the charter equality provisions.

With that as my background, it will be no surprise to you that what I

want to talk to you about this afternoon is the charter implications of the proposed access enforcement legislation.

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The bottom line of what I want to say to you is that if you pass this legislation in its present form and with our—and at least as a result of these hearings, if not before, your—understanding and awareness about the potential negative impacts this legislation will have on custodial parents, who are mostly women, what I and lots of other people will be saying to organizations like LEAF if this legislation passes is that we need to start gathering the data and the material to launch a charter challenge to this legislation, because it potentially offers a serious breach of the charter that will cry out for redress.

We will be challenging this access enforcement legislation as a breach of the charter equality provisions and as legislation that is not justified in a free and democratic society. We now have some fairly good and strong charter decisions that enable me to say to you with confidence that there is a charter challenge in the making here unless you, the lawmakers, live up to the obligation that the charter imposes upon you in making laws, the obligation to ensure that the legislation you enact does not create inequalities or exacerbate existing inequalities.

In that context, I want you to refer to two concepts that are very common now in the discussion of equality under the charter. The first concept is that of disparate impact. It is no longer the case—it probably never was but it is clearly not the case—that gender-neutral legislation is protected from charter challenge and charter scrutiny just because it is written in gender-neutral language.

Just because legislation, on the face of it, applies equally to women and men does not mean that it is not going to be subject to a charter challenge. It is, I think, trite now to say that we look not just at the wording of a piece of legislation, but to its application and its impact. If a piece of legislation has a disproportionate, negative impact on a disadvantaged group, that legislation is in breach of the charter equality provisions.

When we look at the issue of the impact of this access enforcement legislation, what we are looking at is the negative disparate impact on women as custodial mothers. That is what numbers of women and other organizations have been testifying about before you during these committee hearings. These include, of course, the increased harassment of custodial mothers through continuous court applications for access enforcement, the increased bargaining chips that will be provided to fathers who do not really want custody or access but who do very much want lower support payments and/or better property settlements, and of course the increased vulnerability of battered and abused women, who already are at such risk and for whom we cannot provide protection even at the moment.

You have heard, through the course of these hearings, strong and powerful testimony about the overwhelmingly negative impact inherent in this access enforcement legislation and related proposals on mandatory mediation, whether on a so-called temporary, introductory basis or as a mandatory process through to completion, and also, similarly, with respect to proposals for the



imposition of joint custody. All of these potentially have devastating negative impact on custodial mothers.

The legislation will not be protected by virtue of the fact that in its wording it applies equally to women and men when in its effect it predominantly affects women in a very negative way. That is inequality.

The other concept, and I think this in fact speaks to something you were just raising, is the concept of symmetry, because it is now clear to us that with respect to the application of the charter, equality does not mean symmetry. In particular, the Supreme Court of Canada's decision in the Andrews case has made that amply clear. To treat people who are in different circumstances the same is not equality. The same treatment of people in different circumstances frequently has the effect of exacerbating pre-existing inequalities.

In this context, and we often hear this denied, I think most people see that this proposed access enforcement legislation is an attempt to give something to fathers in recompense for something, and that something is the Support and Custody Orders Enforcement Act and the support enforcement that has been given to mothers.

Those support enforcement mechanisms were introduced to try to remedy a clear, widespread and far-reaching problem that was contributing significantly to the poverty status of single mothers and their children in our society. It was an attempt to redress or mitigate a clear and pressing inequality that women, as single mothers, experience in large numbers.

SCOEA, and I am sure you are all aware of this, was of course introduced only after years of study, review and lobbying. So to then turn around and feel somehow obliged to give something in return to fathers in order to balance the scales is inappropriate.

If you do something on one side of an issue to reduce an existing imbalance and then you immediately follow that by doing something for the other side of the issue, you have just re-created the pre-existing imbalance and you may well have entrenched that imbalance even further. Again, that is not equality and that is not in keeping with either the spirit or the intent of the Charter of Rights and Freedoms. I think the message from cases like Andrews is that we need to review carefully what we are doing, why we are doing it and the impact any legislation will have.

I am sure by now you are saying to yourselves: "Wait a minute. She's giving only one side of the story, the mother's side. What about the poor fathers who are denied access. What about equality for fathers?" I do want to address that side of the story, but I want to reiterate before I do so that the charter equality provisions require that the mother's side of the story be examined carefully and seriously, that in framing legislation you are obligated to assess the potential negative impact on women and do your best to reduce or eliminate that negative impact. These hearings have, I think, very clearly put you on notice of a serious and weighty negative impact on women.

You have also heard from fathers that there is a problem they want you to address, that fathers are suffering because they are not able to see and spend time with their children and they want to spend that time with their children. I am sympathetic to what, I am sure, is a very real pain that some fathers experience because they do not see their children or do not see them as much as they would like to see them, but I do not think this access



enforcement legislation is going to help those fathers one bit, and it is going to make life much more difficult for custodial mothers and their children.

I think in this context there is an extensive amount of research that needs to be done and a number of questions that need to be addressed. The first question, of course, is: What really is the problem? Is the problem really that mothers are denying access to fathers and, if so, how frequently are mothers denying access and what is the magnitude of the problem? There is very little research on that question, but what there is seems to indicate that this is a problem that affects only a small number of access fathers.

But for those mothers who are denying access, why are they denying it? What is the source of the problem? Is she denying access because the father has not shown up for the last three access visits? Is it because her children cry and scream and say, "Please don't make me go," or is it just because the children want to play with their friends instead of going to visit their fathers? Is it because the child is upset and difficult and wets the bed for three nights after an access visit? Is it because the mother hates the father and cannot stand the idea of the children spending the day with him or is it because the mother is afraid of her former partner, either for herself or for her children?

The big question is: Do you really think this access enforcement legislation provides any kind of response to any of those problems, and at whose expense and at what cost? Before you introduce any legislation in this area, it seems to me you need to do some extensive research. You need to identify the nature and extent of the problem. You need to canvass any and all possible solutions and look at what is happening worldwide on this issue. I wish I could enlighten you, but I cannot.

We should be looking not just to the United States, because we have a terrible tendency in this country to import legislation from the United States holus-bolus and employ it here. We tend to import it uncritically. We neither look at it critically in its context, to see if it is working in the United States, nor do we try to assess whether we think it is going to work, for example, in the Ontario context. There are indications that access enforcement legislation, mandatory mediation legislation and imposed joint custody legislation in the United States are not working. So why on earth do we think they might work in our context?

It seems to me that access enforcement legislation is a simplistic and unnecessary response to a very complex and difficult problem. It is legislation that will disadvantage women and children and it will benefit no one. I urge you not to pass this legislation, not just to tinker with it and then pass it. You need to put some resources into finding out and assessing the problem itself, why and what is the problem and what the issues are in that problem, and then you might be in a position to consider legislation in this area.

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Mr. Chairman: Thank you very much for a most interesting presentation. Mr. Johnston, you are on for the first question.

Mr. R. F. Johnston: The first, if I can do it through you to the government, if you will allow me to take the time to do that, would be whether

or not constitutional advice was given to the all-knowing Attorney General (Mr. Scott) on this matter.

Mr. Chairman: Is it okay to take some of your time?

Ms. Majury: Certainly.

Mr. Chairman: Mr. Parliamentary Assistant?

Mr. Offer: We are just checking. We are unaware of that, to give you definitive responses.

Mr. R. F. Johnston: Okay. Maybe we will find out later.

Ms. Majury: Can I just comment on that? It seems to me that charter advice on any piece of legislation that so clearly impacts on women is critical, that you cannot proceed without it; and, of course, there are disputes among lawyers and academics about the application of the Charter of Rights and Freedoms.

Mr. R. F. Johnston: One of the difficulties is that the Attorney General is usually the one by whom these things are judged in the government.

Mr. Jackson: I have a supplementary on that point, on the question of information and the response we got from Mr. Offer representing the Attorney General's office. We are led to believe that some of this legislation was vetted through a national review board dealing with matters of this nature.

I would want to extend the inquiry for the legal opinions that may or may not have been forthcoming to this government and this Attorney General, that may exist in other provinces and/or through the federal government. In that regard, I would like to make it clear that I wish to expand Mr. Johnston's request for that information to include those other provinces or the committee, whose name escapes me at the moment.

Mr. Chairman: I think members can request that kind of information. My interest is to make sure we make maximum use of the witness before us at this time.

Mr. Carrothers: You raised an issue, the charter, which has twiggled my curiosity, and I wonder if you could expand on it, because I am having a little trouble. We have an order here for access for custody. We got there somehow, and there may very well be some defects in how we get there, but for the sake of discussion, let's just assume we got there properly. Now we are dealing with some mechanism to enforce it. Unfortunately, sometimes that is necessary.

I guess what I am having trouble seeing is where we go from one set of ways of enforcing, contempt or whatever, which are presently available, to this procedure; we may debate whether it is better or worse, but let's just say it is another way of doing it. How do we all of a sudden get into a charter situation, when it seems to me that what we are doing is simply replacing one important procedure with another? As I said, we can debate whether it is a better one or not, but just for the sake of argument, we are sort of replacing A with B. Where do we get the charter in here?

Ms. Majury: But if B has an impact on women, in the kinds of ways

that women's groups have been saying to you that B is going to have an impact, i.e. be used for harassment—

Mr. Carrothers: If it does.

Ms. Majury: Absolutely, if it does. I mean if it has the potential to disadvantage women, then it is subject to a charter challenge, and the role of legislators, of course, is to ensure that they come up with a solution that does not—

Mr. Carrothers: When you say "subject to a charter challenge," I am assuming you are implying subject to a successful charter challenge.

I am still having some difficulty, because what we have heard, if I have not misunderstood it, is that there can be an imbalance of power and motions and everything else which do that very clearly—put one party to a disadvantage—but I am not clear that this is making that any better or worse, in that it seems that is just endemic. We may have to find other ways to redress that balance. I am still not clear why this procedure would be so detrimental that you would end up in the charter. I can accept debate that it may not be a good way to go and it may have defects; that I can understand. But it just seems such a quantum leap.

Ms. Majury: If it may not be a good way to go and if it may not in fact be the most appropriate way to go in terms of balancing the rights, then it is open to a charter challenge; and with the defects it may have, as you refer to them, if they are in fact defects that disadvantage women, then it should not stand up as a piece of legislation.

Yes, we have an existing mechanism, which groups come before you and say is more than adequate to deal with the nature of the problem as it exists at the moment—

Mr. Carrothers: Groups say the other as well.

Ms. Majury: —and please do not introduce a whole series of additional legislation that is going to have the effect of harassment on women; we do not need it. That is exactly the kind of basis to show that this legislation is not necessary, does not work and has a negative effect on women and is what the charter challenge would be all about.

Mr. Carrothers: I guess it just seemed to me that it was a simpler, more straightforward way that might even lessen that. I guess we are out of time, are we, Mr. Chairman?

Mr. Chairman: Almost.

Mr. Carrothers: Mr. Johnston should notice I am being cut off, by the way.

Mr. R. F. Johnston: I so enjoy it, Mr. Carrothers.

Mr. Chairman: I am fascinated with this area of the charter. The question I am going to ask is not directly on the bill, but it is certainly well within the realm of the questions we have had and the submissions we have had. Under our present law we tend to have sole custody much more frequently

than joint custody, and sole custody more than likely goes to the women. Would a bill—

Ms. Majury: Although, again, I think that is an area—sorry to interrupt—that we need to study, because we do not have statistics on disputed custody cases. In fact, certainly American statistics are showing that fathers are winning custody slightly more than 50 per cent in disputed custody cases.

Mr. Chairman: Would a bill that would bring in presumption of joint custody be subject to a charter challenge because it is taking away the presumption which now goes towards women?

Ms. Majury: I do not accept that there is a presumption going towards women currently in operation in our law. I think the problem with joint custody, again, is that it provides a vehicle for harassment of women and that it in fact does not change very frequently the de facto custody situation, which means that the children are still with the mother, but it gives fathers a lot of power without any responsibilities. That is again what we see happening when we have a presumption of joint custody in the United States. Again, before introducing legislation, one would need to look at what is in fact happening: not what the legislation says, but what is in fact happening in the lives of women and men and children.

Mr. Chairman: Thank you very much. I would love to spend two hours questioning you, but we do not have the time.

Mr. Chairman: Moving along to our next presentation, the London Status of Women Action Group, representing this organization is Margaret Buist. You have one half-hour to make your presentation and you may divide the time as you wish. Hopefully you will leave some time for questions, but that is your choice.

#### LONDON STATUS OF WOMEN ACTION GROUP

Ms. Buist: Thank you. Just to further introduce myself, I am a family law lawyer in London and I specialize predominantly in custody and access disputes. I am also past president of the London Status of Women Action Group and a member of the London Ad Hoc Committee for Family Law Reform. I have provided you all with a copy of some comments on the bill from that particular committee, but I intend to make an oral presentation not based on those written comments.

My position and the position of the groups I am here representing today is that Bill 124 is premature, unnecessary and potentially harmful to women and children. We believe Bill 124 and its predecessor, Bill 60, were proposed in response to cries from a small number of very vocal fathers' rights activists. It was proposed almost immediately after the support enforcement legislation was enacted, legislation which clearly benefited the many women who were owed millions of dollars by men who were not paying their support. It seems that Bill 124 and its predecessor, Bill 60, were proposed with the feeling that what is good for the goose is good for the gander and if we give something that benefits women, we had better give something that benefits men, to be politically correct.

Why do I say Bill 124 will benefit men? We know that most access parents are men and most custodial parents are women. Divorce statistics from 1983 from Statistics Canada show that 86 per cent of all custody orders go to



mothers. However, in the small number of custody cases which are contested, that is, 15 per cent, more than 50 per cent of fathers get custody. What is happening is that yes, women are getting sole custody of the children, but that is because men are not seeking it.

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Since most access parents are men, it stands to reason that the bill, which increases the rights and remedies of access parents, will benefit men most. Fathers' rights groups know this, and that is why they have strongly supported the bill since its inception. You have heard from some fathers' rights advocates that men are being discriminated against in family law now and that they need their rights protected, particularly to access. To say the least, this statement is unfounded. To be quite blunt, it is a lie. All the evidence available to us today, all the research studies, task force reports and statistics in both the United States and Canada show that women are being treated unfairly, unequally, and are being discriminated against in our judicial systems, particularly in the areas of family law.

It is interesting to note that none of this research comes from Ontario. In fact, there are absolutely no studies we could find that have been done by the Ontario government or on its behalf with respect to gender inequality in the legal system in Ontario. It is most interesting to note that no research we are aware of has been done at all on access enforcement in Ontario, no research to show that this bill is necessary, that it is the right approach to the problem or that it will not cause more damage than good.

The only indication of the justification for this bill are comments made by Michael Cochrane of the Attorney General's office at a conference held by the Law Society of Upper Canada, where he wrote in his paper on Bill 124: "Out of all the concerns"—those are concerns with the inadequacies with the current law—"grew the remedies proposed in Bill 124. It is expected that these remedies will work in conjunction with the new support and custody orders enforcement program. A frequent complaint heard by the support and custody orders enforcement staff is that access is being denied and cannot be enforced."

That was the only justification I could find or have heard from the Attorney General's office for this particular bill: a reference to some complaints to the Support and Custody Orders Enforcement Act. Not who is making them, not how many, not what they are specifically about, but some complaints.

It is interesting to note that when Mr. Cochrane presented this paper to the Law Society of Upper Canada, to a group of over 100 lawyers, the Ontario Lawyers Weekly reported that feelings were so negative that when the audience of more than 100 lawyers was asked by Mr. Cochrane to indicate by a show of hands whether it thought the amendments were worth while, only one man raised his hand.

Michael Cochrane also justifies the Ontario bill by referring to similar initiatives in other provinces, and he refers specifically to Manitoba. Access enforcement legislation was passed in Manitoba recently. Prior to this new law, the Manitoba Attorney General's department did conduct some research into access enforcement, more than this province has done at the very least. The research was conducted by Candice Minch of research and planning in the Attorney General's department in September 1986.

This was a survey of 121 access parents, not a large sample by any standard. It revealed that 15 per cent, that is, a total of 18 people, were currently experiencing problems getting access to their children. It does not specify these people by gender, and in fact it is difficult to determine from the study what these problems were.

The report states that access parents perceived that the difficulty in gaining access to their children was primarily the result of the other parent being unco-operative. The statistic for that is 71 per cent. When worked out, that means 13 people thought the other parent was unco-operative. On that basis, Manitoba passed access enforcement legislation. We do not even have 13 people documented in Ontario.

In fact, research shows that the primary problem with respect to access is not necessarily access denial. A federal study, published in 1977, of 1,300 cases of divorced parents concentrated on custody and access. It found that only 13.4 per cent of the men and 17.7 per cent of the women said they were having trouble concerning the children.

When they were asked to identify the nature of the conflict, one third of the women mentioned their ex-husband's unreliability about access as a primary issue and one quarter complained of the ex-husband's tendency to say negative things about them in front of the children. Those were the women's primary complaints.

The men, the 13.4 per cent having trouble, listed the latter problem, that is, the saying of negative things, as their biggest concern, followed by their ex-wives' failure to have the children ready on time when they arrived for their visits.

It is very interesting to note that this study, done by Professor James Richardson, a sociologist from New Brunswick, paid particular attention to issues relating to custody and access because of the publicity that fathers' rights groups attracted to their claim that embittered fathers are denied access to their children by a legal system biased in favour of women. Professor Richardson noted:

"Certainly, the author, in the course of this research, has encountered men who, having lost a custody battle, carry on a personal crusade, often monitoring every behaviour and relationship of their ex-spouse in the hope of finding evidence to overturn the previous decision. And, in C. Wright Mills' famous phrase, some of these men have turned a 'private trouble' into a 'public issue.'"

There is no research to show that this bill is necessary. In fact, existing research tends to show that access enforcement is unnecessary and that only small numbers of access parents are experiencing difficulties, not necessarily denial.

Not only is there no demonstrated justification for this bill; this bill is likely to provide an additional lever to intimidate and harass women through the courts. You have heard hours of testimony of the specifics of how this could happen.

This bill unfairly tips the balance in family law further towards men at a time in Ontario's history when this is not justified. It provides men, who constitute most of the access parents, with quick and easy access to the courts and a range of remedies to be used against mothers who may deny access

for legitimate reasons and yet may not be believed by the courts. Faith in our judicial system and in the wording of this bill is tenuous, to say the least, given the experience of most women, particularly in family courts.

I practise family law in London and I did not bring in my message tape because it was too long to play to you. I received probably more than 10 calls a day from women who are being harassed by former partners, dragged back to court continuously, accused of obstructing the father's rights to access and threatened or intimidated during the exchange of the children.

Since fathers' rights groups rely almost solely on anecdotes to support their case, I can provide some of my own. One woman's young boy does not want to go with his father on weekends to his father's home out of town. The father will not change the terms of the access to accommodate the boy's wishes and the mother is distraught because she is being accused of being unco-operative and turning the boy against the father.

They are now undergoing an assessment at a custody and access project. Fortunately, there is one in our community. However, the woman is currently still not being believed. She is having continuous difficulty and she is being dragged back to court years after her divorce.

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As we speak now, one woman I know is denying court-ordered access to her young girl's father because the girl says she is being sexually abused. So far, no one has believed the child. The mother cannot convince family and children's services of her fears for her daughter, and the court order for access stays in place. She does not want to defy the court order, but she feels she has to do so to protect her child.

In the United States, women whose children disclose sexual abuse have tried to deny access through the courts, through changing the court orders. They have tried to deny access in breach of court orders, and some have become so desperate that they are now going underground. There is a new underground railway in the United States forming now, and it is happening in Canada as well. I can only see one of the effects of this particular legislation as creating the need for an underground in Ontario.

I have provided these examples to demonstrate how women are disbelieved and discriminated against in the courts. Women are treated unfairly enough by our justice system without adding to the arsenal of weapons some men will use to maintain control over them.

I am not just speaking of battered women. I am not just speaking of cases of sexual abuse or exceptional cases in any way. I am speaking of most women who experience the family courts. I am talking about a systematic, unfair treatment of women by our judicial system.

Not just to rely on anecdote, let me also refer you to research. Recently a report on gender equality in the courts was produced by the Manitoba Association of Women and the Law. This study was based on a review of court cases. It is the finding of this study that, generally, courts fail to recognize that women continue to be economically and socially disadvantaged in Canada. With respect specifically to access, the report states:

"The single largest problem for women in the area of access seems to be that the courts do not give sufficient weight to the mother's assessment of

whether or not a particular person, the father or anyone else, should have access to her child. Where a mother has been the primary care giver to her children, she is most likely to be in tune with their needs and best interests, and what she says should not be dismissed lightly." Yet it is being dismissed lightly.

There are a number of United States task forces as well on gender equality in the courts that come up with similar findings.

Given this systematic discrimination against women in our judicial system, what good will it do for women who say "My child didn't want to go" because the child is sick? Will she be believed? What good will it do for a woman to use the legitimate reasons provided in Bill 124 if she will be painted as vicious, domineering, punitive and never be believed by the court system?

In conclusion, you will note that I have not referred to specific sections of Bill 124, because this bill should not be passed into law at all, not one section of it. It is premature. It is based on assumptions, not solid research. It is based on anonymous, undocumented complaints to the support and custody orders enforcement people, as mentioned by Mr. Cochrane in his paper. It is based on lobbying by a small group of men who have the most to gain from it, and it is not good for women and children.

My recommendations are that the Ontario government should conduct research to show there is a problem, if there is one, with respect to the denial of access. The Ontario government should be addressing the real issue in family law today, which is inequality for women in our legal system.

If we are going to follow the lead of other jurisdictions, as Mr. Cochrane says we are with Bill 124, then let's follow the lead of those forward-looking jurisdictions which have established task forces on gender inequality. Rather than passing legislation, let's see whether or not we really need it.

The Vice-Chairman: Thank you. We have three questioners, Ms. Poole first.

Ms. Poole: You have very strongly vilified the Ministry of the Attorney General for proceeding without proper Ontario-based research. At the same time, I found that in your brief you have made some very strong statements yourself, such as that of the 86 per cent of mothers who have sole custody. You say the reason that they do so is because the fathers are not interested in having custody. You have also stated that there is no need for this legislation because there is only a small group of men's rights activists out there pushing for it. Upon which Ontario-based research or empirical evidence have you based these statements?

Ms. Buist: Which particular statements?

Ms. Poole: The statements about the fact that 86 per cent of the mothers have sole custody and the reason for that is that the fathers are not interested, and also the statement that it is only because of a small vocal group of men's rights activists that this bill is being proceeded with. I did not hear any numbers. I did not hear any substantiation. I wonder if you could do that.

Ms. Buist: With respect to the divorce statistics—



Ms. Poole: I am not questioning that 86 per cent of mothers have sole custody. I am questioning the statement made that the reason for it is that the fathers are not interested. I wondered if there is any research to substantiate that.

Ms. Buist: The same study done under the Divorce Act says that only 15 per cent of the custody cases were contested. That means that only 15 per cent of the fathers tried to get custody. But out of that 15 per cent, at least 50 per cent of them were successful in obtaining it.

Ms. Poole: These were custody cases before the courts. There is no empirical evidence before those cases reached the court of how many fathers went for legal opinions and were told that there is absolutely no point in our current climate in the courts of asking for custody because they are not going to get it. I have had a lot of men come to me with problems such as that.

Ms. Buist: These statistics show that there is a better than 50 per cent chance that if they fight they will get it. So if they obtain that legal advice, they should seek better legal advice.

Mr. Carrothers: How does that follow?

Mr. R. F. Johnston: I am not sure it is a logical assumption that just the ones that do feel they have a really good case go and get 50 per cent, so that means the whole group that might want custody would have 50 per cent. Not that I deny your interpretation; I am just not sure if that is statistically logical.

I think one of the sources, though, for Ms. Poole's question that you could look for, if you want a source that says it is to respond to the fathers, would be speeches given by the Attorney General (Mr. Scott) some time ago in which he indicated that in response to the other act, this kind of act would be forthcoming. But at any rate, I will not dwell on that too much.

The Vice-Chairman: Do you have a question?

Mr. R. F. Johnston: I do have a question. Do you know or have you any information for us—after the new Divorce Act's proclamation around the "friendly parent" rule that was then inserted—about changes that have taken place since that time in the disposition of the court in terms of custody, etc?

Ms. Buist: I do not, no. The statistics that I referred you to were Statistics Canada figures from 1983, so they are fairly old. I honestly do not know whether there are more updated statistics. I can undertake to find out, though, if you like.

Mr. R. F. Johnston: Do you know if there have been any studies done of that? A lot of people who have come before us have been attacking the presumptions of that section and warning us about the section in this bill which they see as less explicit but going down the same road. Are there any studies being done to see what effect that is having or what presumptions now are being made by the courts because of that?

Ms. Buist: I am not aware of any. My sense is that the studies that are done in the family law area with respect to these issues are very few and far between and not well funded.

Mr. Carrothers: We are talking about denial of access and, I guess,

the situation that occurs when the custodial parent would have to defend a denial of access, when one is accused of being vindictive and so on. I want to understand because I had seen or thought that the procedure set up here puts in a mechanism and gives some legitimizing reasons and sets us into a little frame of discussion over reasons which are fairly broad but would perhaps help that custodial parent; in other words, you are not thrown into what might be a vacuum where one starts throwing things all over the place about this, that or the other.

You are now limited to talking on these areas and you have some legislated reasons why you could deny, and so now the issue becomes whether or not those reasons were there. I guess my initial impression had been, and I would like you to perhaps explain why it is wrong, that this might help the noncustodial parent and take us away from that vindictive thing. I am just wondering why it is not a step forward.

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Ms. Buist: I think it is not a step forward because you have to look at those reasons given the context of the basic misunderstanding of women and discrimination against women in the court system. Having written reasons is not going to make any difference to a woman who is not believed anyway.

In the anecdote that I gave, that particular woman is saying right now that her child does not want to go. That is not specifically defined as a legitimate reason in the legislation, but say that the court is feeling particularly broadminded and decides to see it as a legitimate reason. They still have to believe that woman that her child does not want to go.

Given the current context of the courts and the current attitudes towards women reflected in the courts, it is very likely that woman will not be believed anyway, with or without the new legislation.

Mr. Carrothers: If the issue then is whether there is a bias, I think that takes us into another area, because assuming that is correct, are we not at least helping maybe just a little bit by doing this, giving her a little more ammunition?

Ms. Buist: I do not believe so. I believe that this bill gives more ammunition to the access parent, not the custodial parent.

Mr. Carrothers: In what way?

Ms. Buist: It provides them with all the remedies that are not in existence. It provides them with quick and easy access to the courts. I am sure you have heard critique after critique of the sections of the bill, but the 10-day oral evidence rule, the remedies which are no longer in existence, the presumption that a child should have contact with both parents, all those things—

Mr. Carrothers: That presumption is not in that bill. That is another dispute here.

Ms. Buist: All those things far outweigh, I believe, the minor—

Mr. Carrothers: But are we not narrowing the conflict, if you will, down to some very commonsensical reasons? It seems to me it just narrows that dispute into something that might stay within rationality. Somewhere in here

you talked about if conditions have changed. Obviously, you can then move into a full-blown rehearing of the access order, if that is appropriate, but it seems to me that this narrows the frame of conflict, it gives some reasons for denial and, accepting just for the purposes of debate that there is a bias and there is a problem being believed, at least we have given a little more ammunition.

Ms. Buist: Those reasons—

The Vice-Chairman: You have had quite an exchange and there are two other people waiting.

Mr. Carrothers: Excuse me. Mr. Johnston will take note of that, I hope.

Mrs. Cunningham: Could we have a response to that one?

The Vice-Chairman: Do you want to continue with that then? There are two other questioners waiting. Could you give a short answer to Mr. Carrothers on that last point?

Ms. Buist: Those legitimate reasons for denial already exist now. They are already open to women in the courts, and it is my submission that women are not being believed now. As it stands, this bill is not going to help them.

Mr. Carrothers: Do the onuses of proof not change and is that not a big change?

Ms. Buist: The onus is now on the woman; it is even harder. The onus is on the woman to show that she has a legitimate reason.

Mr. Carrothers: Now, yes.

Ms. Buist: Yes. That makes it even worse.

Mr. Carrothers: This would make it easier.

Ms. Buist: No, that makes it worse, to meet that onus.

The Vice-Chairman: You have had a long exchange.

Mr. Carrothers: I am sorry, Madam Chairman.

The Vice-Chairman: Okay. Mrs. Cunningham.

Mrs. Cunningham: Welcome. It is good to see you here.

Ms. Buist: Thank you. It is nice to see you.

Mrs. Cunningham: It is nice to meet each other in another city. That is how busy we seem to be.

I am going to go back a little bit, aside from your presentation, because you obviously have convinced me, to what the problem is, even for a small group of people. In your practice, I am making an assumption that from time to time you probably have seen or have had clients who do attempt to deny access, for whatever reason, whether it is reasonable or unreasonable or whatever.

Where do you send those clients for assistance, or do you do it yourself? What do you do to help someone right now who wants to deny access, I am assuming wrongfully, someone who, in your opinion, should be giving access and is not? What do you do as a solicitor right now? Do you have a way of helping the client—I am talking about the child now—have the problem solved?

Ms. Buist: I am fortunate in being from London to have certain services available to me that are not available to many communities. For example, we have Merrymount Children's Centre, which provides supervised access. That can often ameliorate the difficulties for women who are afraid of violence on the exchange and therefore want to deny access, who need supervised access in some form. They can then have that supervised access and the access can continue under the auspices of Merrymount. There is one resource I have available to me that many, many communities do not and should.

Second, another thing I would do is take them back to court and try to have the access order varied. That is very difficult, because I then have to prove that there has been a material change in circumstances and I run headlong into the problem of these women not being believed in court, for example, if they allege sexual abuse.

Third, there is the London Custody and Access Project, which can provide me with a good assessment report I can then use, but there are many communities which do not have that sort of service available to them.

Mrs. Cunningham: It is interesting in my position now at Queen's Park. People are coming to me and saying, "Support this bill because this is what is happening to me." There really is a great deal of concern on behalf of, as we have all admitted, a very small group, but to that particular group and their children it is a very big issue. I think that is what this legislation is attempting to address and I think you stated that as well.

I have been trying to tell them that it will not solve the problem. I think you responded to Mr. Carrothers and stated that in fact it makes it work worse for everybody, because if it is making it worse for mothers it is making it worse for children. That is what I like to talk about in this legislation.

I guess maybe I am particularly biased towards the services we have in London. I think of the money that went into writing this and the hours and hours of work that went into the advice the government got. Over a period of years, by the way, we have had reports come to us on mediation and what not. I think there has been some research done on family court clinics as well as access projects that the government has been advised on. The bottom line is that you should do more of it.

I guess maybe I was just very pleased that you came here today and sort of supported the line of thinking of the people who have had the services. I thank you for it.

The Vice-Chairman: This is time for questions, Mrs. Cunningham. Mr. Daigeler.

Mr. Daigeler: Thank you, Madam Chairman. I was wondering whether Mrs. Cunningham put some time down for her presentation as well. I would be pleased to receive her brief.

Mrs. Cunningham: It is my usual style; you should not be wondering any more.



Mr. Daigeler: That is true, too.

Mrs. Cunningham: Do not worry about it.

Mr. Daigeler: I am kind of used to your oratory, but perhaps you should reserve it for the leadership campaign.

The Vice-Chairman: This presentation is out of time, so I am going to grant Mr. Daigeler a couple of minutes in any case.

Mr. Daigeler: Thank you very much. One of the briefs we received today is from the manager of the St. Jude's Project, a home for homeless youth here in Toronto. Among other things, he says the following and I would like to hear from you what kind of reaction you would have to this. He says, and obviously he has some experience with difficult family situations:

"Currently, sole custody maintains an adversarial relationship between parents and so the example the child sees is fighting. You can significantly decrease the future numbers of children who will face this dilemma by your committee's ultimate recommendation, because joint custody can provide a mechanism to deal with fighting. The child needs both the female and male parent's influences to turn to in time of crisis." I was wondering what your reaction would be to this.

Ms. Buist: I am fascinated to hear both presentations and discussion at this committee on joint custody, because it has always been my impression that this bill is simply paving the way for further legislation on joint custody, which would be loved by Mr. Henderson and his cohorts, and also by paving the way for mandatory mediation or a form of mandatory mediation. I am fascinated to hear that, because it confirms my feeling that this sort of legislation is merely opening the door towards those legislative moves.

I am absolutely opposed to anything to do with joint custody through the court system. It should not even be raised at these hearings, I do not believe, and certainly is something which—Basically, if it has to be ordered by a court, it should not exist. Joint custody is not something which can be imposed or ordered; it must be an arrangement between the parties which has existed over a period of years, in fact, as opposed to something which is imposed by the court system.

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So I am very interested to hear that the presentations and the discussions in the committee deal with joint custody, because that confirms my suspicions that this sort of legislation merely paves the way for it.

The Vice-Chairman: I would like now to ask Elizabeth Gray to come forward on behalf of Ernestine's Women's Shelter. As there are more than Elizabeth Gray present, I wonder if each of you would introduce yourselves for Hansard.

#### ERNESTINE'S WOMEN'S SHELTER

Ms. Gray: My name is Elizabeth Gray and I am representing Ernestine's Women's Shelter. I am on the board of directors and chairman of the social action committee.

Ms. O'Hara: My name is Maureen O'Hara. I am a counsellor at Ernestine's Women's Shelter.

Ms. Pellegrini: And my name is Laura Pellegrini. I am a children's advocate at Ernestine's Women's Shelter.

The Vice-Chairman: Thank you very much. You may begin.

Ms. Gray: I will start by saying that we would like to share a few of our observations about the positive aspects of Bill 124 as well as some of our concerns.

The three of us represent Ernestine's Women's Shelter in Rexdale. Ernestine's is a 22-bed emergency shelter for women and children forced to leave their own homes because of violence there. Since opening in 1984, more than 600 families have found temporary safety at the shelter and 10 times that number have been turned away because of lack of space.

Legislation affecting custody and access is of particular significance to the women and children we work with. We appreciate the standing committee on social development taking this time to hear our response to Bill 124.

First, we strongly support amendments to subsection 24(3), which states that if a person has committed acts of violence against a spouse or child, this will be considered in assessing their ability to act as a parent.

We also support aspects of subsection 35a(4). Under this section, denial of access is considered legitimate if the parent fears that physical or emotional harm could come to their child through provision of access. One mother at our shelter was recently forced under threat of contempt of court to provide her husband access to their young daughter, who had disclosed sexual abuse by her father to several adults, including a doctor at the SCAN program, suspected child abuse and neglect, at the Hospital for Sick Children.

Paragraph 35a(4)2 provides for denial of access if the custodial parent "believed on reasonable grounds that he or she might suffer physical harm if the right of access were exercised." This, of course, has a direct bearing on the situation of many battered women. We had a family come to the shelter recently after the access parent located his wife by following the children home after their access visit. He threatened the woman with her life and she and her children had to leave the new home they were making for themselves and return to safety in a shelter. In our experience, it is not uncommon for a batterer to use access privileges to locate, threaten and batter his former spouse.

We also support paragraph 35a(4)4, which entitles a custodial parent to deny access if the access parent is late more than one hour. We often witness women and their children waiting for long periods of time for an access parent who may not show up at all. This is extremely upsetting for the children and their mothers are left dealing with the children's feelings of rejection, confusion, anger and sadness.

We believe the abovementioned aspects of the proposed legislation will, for the first time, provide some protections for battered women and their children, if they can be practically implemented.

However, we have some serious concerns with subsection 20(4a), dealing with the duty of separated parents. We would like to see this part of the bill eliminated. It states that it is the duty of each parent to "encourage and support the child's continuing parent-child relationship with the other." This is clearly unfair and potentially dangerous for victims of wife assault, both

women and children. Our experience is that in many cases, fathers who have battered their spouses and sometimes their children have little interest in establishing meaningful relationships with their children through access. Children are sometimes the unfortunate victims in a batterer's attempts to maintain a hold on his spouse.

We feel a mother should not be forced through legislation to encourage and support her child's relationship with his father when it is not a healthy relationship. A three-year-old at Ernestine's was recently instructed by her father to stab her mother in the eyes with scissors when she was sleeping. That same father, who had supervised access privileges, had in the past submerged the child's head in toilet water to discipline her.

We also question the consequences to the woman if she is viewed by the courts as not fulfilling this obligation to encourage and support her child's relationship with her former spouse.

Another proposed amendment we would like to see eliminated is section 2, amending section 24 of the act, which relates to custody, access and guardianship. In this section, factors affecting the determination of custody and access are outlined. Our concerns here include that the factor of economic stability could adversely affect battered women. A woman forced to leave her home and stay in a shelter or elsewhere for safety could well be denied custody in spite of her parenting skills and any loving, nurturing relationship she might have with her children if a judge should decide a shelter environment is unstable and not in the best interests of the children.

This section is vulnerable to the arbitrary judgements of individual judges. One mother at our shelter recently lost custody of her three children. Her residence in a shelter was a determining factor in the judge's decision. Without custody of the children in the shelter, she could not qualify for a subsidized housing unit that could have accommodated her family.

The suggested use of mediation in the resolution of access disputes under section 6, clause 35a(6)(c) of the act, is another problem area for us. We do not feel confident that court-appointed mediators would have the training or sensitivity to wife assault issues or to the vulnerability of a battered woman forced to sit down in a mediation session with the man whose beatings and threats forced her to leave in the first place. We fear battered women could be coerced to agree to something that jeopardizes their safety or could be seen as unco-operative and thus risk losing their children.

Under section 6, subsection 35a(9) of the act calls for oral evidence in hearings dealing with denial of access, for the purpose of expediting the process. We believe this would put a battered woman at a disadvantage because of the fear and intimidation she would be subjected to by her husband.

To adequately represent herself in this manner, the woman would have to possess great self-confidence and good English-language skills. We have a large immigrant population in our shelter. Because of this, we are aware of the many difficulties that face battered immigrant women. We feel strongly that the oral-evidence-only requirement would be unfair to these women.

We hope the recommendations of your committee to the provincial Legislature will reflect both our concerns and what we perceive to be the positive aspects of this proposed legislation. We believe the health and safety of battered women and their children will be greatly affected by what you decide. Thank you for listening to us.



Mr. Chairman: Thank you for your presentation. The first question is from Mr. Carrothers.

Mr. Carrothers: Thank you for coming before us today. I want just to clarify a couple of things. On the second page of your brief, you talk about amendments that are being made to subsection 24(2). I just want to make sure I understand what you are saying.

You are talking about economic stability. As you are no doubt aware, that is not a proposed change. That section is in the present law. Are you saying that should be taken out of the existing law?

Ms. Gray: Yes.

Mr. Carrothers: All right. The way it has been drafted, they put the whole of subsection 24(2) in, but in fact the only change being made by this bill is to actually insert domestic violence into the existing law.

Ms. Gray: Right.

Mr. Carrothers: You are saying we should go back and take something out of the existing law. You are aware that is in. I just wanted to make sure of that.

You talked about the oral evidence requirement when we get before a hearing. This is something some others have mentioned, and I am interested in your thoughts. Obviously, you seem to agree that there are only two forms of evidence that can be brought before a court, unfortunately, either something they call viva voce, oral evidence, or an affidavit. There really is not much other way, I guess.

1630

In my own reaction, I had been fairly positive to this, because I thought that at least what this was going to do was take us out of the realm of who has the best—

Ms. Gray: Speed up the process.

Mr. Carrothers: Not only that, but it is no longer a battle of the draftsmen; who writes the best affidavits.

Ms. Gray: Yes.

Mr. Carrothers: The people are there and the judge can assess them. I know from being in that experience that it is fairly helpful. You get to see the people, you can ask questions and get a sense of them as well as the words they are using, and that would improve it. I understand the point you are making about language, though, which is a very good one and a very real problem. Of course, the section does allow affidavits as well. I am just wondering how else this would happen, or how could we improve that to deal with the problem that you are speaking about?

Ms. O'Hara: Our problem is that it states "oral evidence only." If there is the option for affidavits, that is not a problem for us.

Mr. Carrothers: I see. Maybe I should point out that it does say that upon leave, affidavits can be used, so presumably the procedure would be



to bring this problem up and then you could use affidavits; something like that, in other words, getting some alternative.

Ms. O'Hara: If it is not restricted to oral evidence only, then we do not have a problem.

Mr. Carrothers: Okay. I guess the final point, if I may, Mr. Chairman, on subsection 20(4a), which you have brought up as well, is that it does indeed have a duty to encourage and support the child's continuing relationship with the other parent, but that duty only arises after you have determined who has custody and whether there should be access. In other words, I do not read it—again, I have asked many people, because I may still be not understanding it—as saying that in every case you have to encourage this relationship. It is only when you have determined or the courts have determined—perhaps imperfectly, granted, but anyway have determined—that there should be access that there is now a duty to make that access work. I just wanted to point that out, because I think I can understand the point of automatically always requiring it, which is in another statute, the Divorce Act.

Ms. O'Hara: Yes.

Mr. Carrothers: I am just wondering if that changes your views at all.

Ms. Gray: Providing that is the way it is seen by the courts.

Mr. Carrothers: I would hope they would interpret it as it is written. As I have said before when I have asked this question, I may not be interpreting it correctly, but that is how the section reads, and I will just paraphrase it: Where the parents live separate and apart and there has been a separation agreement or order, then each shall do this. In other words, it only begins when those two things have happened.

Ms. O'Hara: Our experience is that a father, a batterer, can have access to the children, and we feel that a battered women should not be compelled to encourage that relationship if she perceives it to be an unhealthy one, whether or not the court has determined that he has access.

Mr. Carrothers: That is a point I understand. The solution to that problem may very well be making the system more understanding of abuse. That may be the real problem. The key may be the point you have made, that it may have made an access determination incorrectly and the solution may be to make sure those access determinations are made properly here, rather than—

Ms. O'Hara: Certainly.

Mr. Chairman: Would you finish this question? Answer the question and then we will move on.

Mr. Carrothers: I think she actually did, Mr. Chairman.

Mr. Chairman: You did already?

Ms. O'Hara: Yes.

Mr. R. F. Johnston: I saw Mr. Carrothers leading you along a certain path and I just want to see if I can get you back a step or two, because

unlike any other group, you have raised the problems of immigrant women in this situation.

Interjection.

Mr. R. F. Johnston: I did not say you were leading the witness. Do not take offence. Leading you along a path is what I said, the path being one of trying to say that a written affidavit would be sufficient and that therefore getting leave to have that would solve the problems.

I wonder if you could talk a bit about the significant problems immigrant women have in comparison with other women in this situation, given this 10-day parameter that has been put on us, in terms of finding lawyers they can deal with, who can deal with their language, who can understand their problems orally and that kind of thing. Can you tell us a little about your experience of immigrant women and the law at the moment in terms of these proceedings and this 10-day rule and what the difference in the length of time to prepare would be?

Ms. O'Hara: I think the example of immigrant women being greatly disadvantaged by the oral-evidence-only part of the brief is an obvious example for us. I guess our position is that battered women generally, with respect to this part of this proposed legislation, are always going to be disadvantaged in that situation. We have made points about a person having to have good English-language skills and having to have the self-confidence to represent himself orally in an environment that is quite intimidating. Immigrant women again are just one step further disadvantaged.

Mr. R. F. Johnston: How many of these women, in your experience, have had a lawyer who is readily at hand who they used? How many of the immigrant women whom you have had experience with have their own lawyers all ready before all of this and are well armed?

Ms. O'Hara: Yes. It is always difficult making those arrangements. First of all, to find a lawyer who speaks the woman's language is really difficult. We often cannot do that and we end up going through a long process of arranging for interpreters to meet with the woman and her lawyer. So the whole process is really lengthy and time-consuming.

Mr. R. F. Johnston: Other people have raised the issue but not in terms of a specific clientele. May I ask you a question you did not deal with and is not your first interest, I know, in terms of your responsibilities to the women who come into the shelter. It is about the children specifically. I meant to ask this of some of the lawyers who have been before us this afternoon but I forgot to.

Do you feel that the children, the older children specifically, who are involved have sufficient play in the court system at the moment around these matters of access, in terms of the role of the official guardian and other kinds of things that are there for them? Do you feel their interests and their ability to express their interests in the system, whether it is within the actual court or whether it is in getting their point of view across to the courts in advance of that, are being well exercised at this point?

Ms. O'Hara: Laura Pellegrini is our child advocate, so she might address that.

Ms. Pellegrini: The thing is that we do not often see a lot of the older children because we do have an age limit, which I think is 16, if I am correct. In my experience working at the shelter, it has been around the younger children. In one of the examples that was given around the disclosure of sexual abuse, the child was only two years old. The thing was that although there was an investigation, the child did not disclose during the investigation. She disclosed to the mother and the counsellor at the shelter. Then I feel she was not really being represented and it was not actually an official guardian who was brought in. I would like to see them being more represented as time goes on. Right now, I do not really think they are getting a chance to express themselves.

Ms. O'Hara: I can think of a couple of examples, also, of children who were a bit older, like 11 or 12 years old. One pops to mind immediately. It is a little girl who did not want to have to visit her father and an official guardian was appointed. She was really clear with that person that she did not want to see her father. She was clear with everyone that she did not want to. She did not have a choice. So she is not being listened to.

Mr. R. F. Johnston: Thank you.

Mr. Chairman: Mrs. Poole, time for a question.

Ms. Poole: I will try to make it a quick one. First of all, thank you very much for coming before us. I can appreciate that you gave both the positive and what you felt were the negative aspects of the bill. I would like to go to the clearly distressing example you gave of the three-year-old whose father told her to stab her mother in the eyes while she was sleeping. This was the same father who had supervised access privileges and had, in the past, submerged the child's head in toilet water to discipline her.

This brings me back to the court system, because obviously this father got access, albeit supervised access. You must go to court, maybe not on a regular basis but from time to time, with women from your shelter. Have you noticed over the past year or two that there has been any difference in the court's attitude towards domestic violence, a difference, say, that you did not notice seven or eight years ago?

Ms. O'Hara: Some small change, I would say. Some crown attorneys are better informed about issues around wife assault, but I do not see any difference at all in the judgements that are being made. I think, quite frankly, there is a dramatic need for judges to be better educated around issues of wife assault and start making more responsible decisions.

1640

Ms. Poole: So there is no great cause for optimism as far as court judgements are concerned? They are still not really recognizing the factor of domestic abuse the way it should be?

Ms. O'Hara: I think that is correct.

Mr. Chairman: I want to thank you for coming before the committee and sharing with us your perceptions and views on this issue.

Our next presenter is Alan Coupe. Welcome to the committee. You have 15 minutes. You may use all of that time for your presentation; however, you may reserve some time for questions from committee members. I caution you against

making reference to matters that may be before the courts or are likely to appear before the courts in a dispute.

ALAN COUPE

Mr. Coupe: I really do thank the committee for the opportunity to speak before you today. I apologize in that this was a rather hastily prepared submission today, so I do not have copies to go around and there may not be time for questions at the end.

First, I am here as an access parent with the experience of some personal problems in access, problems I have spent a great deal of time and energy on. I am not working as a lawyer; I am not a lawyer and I do not work with any social service agency, so it is really my own experience that I am drawing on.

First, I would like to ask the committee to consider whether family law is really so convoluted as other presenters might have you believe. If you all cast your minds back to your own experiences as a child, is it not easy to say that children want to have good relationships with both their father and mother? Such relationships may be a struggle at times, but children want and need these relationships and it should be their right to have them.

Most parents, too, want to know and love their children and they obviously need time to do this. If the law can assure parents that they are not going to be cut off from their children, then separated parents are probably going to behave more reasonably and be open to compromise.

The first focus, however, should be children's rights. That does not mean parents' rights are out of focus, but it does mean that children need the protection of the law where their parents fail to agree. My first recommendation to the committee, then, is that there should be some elaborate and specific recognition of the right of children to have access to each parent enshrined within Bill 124.

Children learn different things from their father, their mother and their grandparents. Studies show that children benefit from two or three loving care givers. In their early years, they socialize better than if they had only one close care giver. Boys, especially, develop more confidence and do better in school if they are close to their fathers. Children are not confused by relating to several care givers and the care givers themselves benefit by sharing the task.

The best care givers are close blood relatives. Most people give more attention to the children of their kin than the children of strangers. Legislation should recognize this. The federal Immigration Act, for example, does recognize the paramount importance of blood ties between children and their natural parents and grandparents. Should not the citizens of Ontario enjoy the benefits of the same principle? I recommend that the special nature of blood relationships be given more elaborate and priority mention in Bill 124 and that grandparents be specifically mentioned along with parents.

I found the presentation yesterday by family lawyer Ms. Hooshangi especially interesting. As Ontario becomes more multicultural, legislators should be open to the insights to be gained from additional cultural perspectives.



Ms. Hooshangi pointed out that in many cultures, family problems are solved mostly within the family, even where advocates are involved. There is little question of parents being cut off from the right to see their children. The blood ties of family do not cease to exist because the parents do not live together. The dynamics of family unity are such that parents respect and listen to grandparents who often act as mediators between families. Family unity remains the best way to solve family problems in those cultures.

Here, our system of litigation tends to divide family resources and sometimes creates more conflict than it solves. If the influence of the family is declining in Ontario, we perhaps need more mediators outside the family to replace those who might otherwise be found within the family.

It is my recommendation that this bill not be implemented without consideration of an expanded role for mediation in Ontario. Mediators, for example, need incentives; they need recognition by legislators and government that their role is important. Mediation itself needs time to grow and to prove itself one way or another in Ontario.

Yes, as some groups have said, mediation works best when consulting parties are relatively equal in power or at least respect each other, but it is not true to say that mediation does not work at all in the absence of these factors. Mediation by its very nature encourages people to examine alternatives they might not have been aware of. I do not think you have to be a social scientist to say that mediation is much better than litigation in promoting long-term conflict resolution.

It seems to me that some of the submissions before you want to resolve conflict by removing one of the conflicting parties, that is, the man, the father, for ever. This may be warranted in some cases of physical abuse or sexual abuse, but in all other cases, I would submit, the custodial parent and the access parent, both adults, should be able to consult, even if only through a third party.

My recommendation is that Bill 124 should make it clearer to the parents that the third party of preference is a mediator rather than the court. This would certainly save valuable court time and costs to the taxpayer. Of course, mediated agreements can always be subjected to independent legal advice and the court does remain the third party of last resort.

Where cases do go to court, there are procedural and evidentiary problems with Bill 124. The requirement that a motion be heard within 10 days of service is probably unworkable, simply because lawyers and the courts are not geared to responding so quickly. As the system fails to respond, this part of Bill 124 may lend itself to more conflict.

I would recommend that the time period be changed from 10 days to 30 days. This would still give an access hearing the priority it deserves over some other court matters, but would also allow time for the gathering of affidavit evidence, which I think the courts should also accept. Limiting the evidence to viva voce testimony gives the edge to the better orator in court. There may also be family members, professionals and others who know the child and the child's relationships and find it most convenient to give evidence by way of affidavit. The court may choose, of course, to give more weight to oral evidence, but it should have the benefit of all pertinent evidence.

I recommend that Bill 124 be amended to not only allow for affidavit evidence at a hearing, but to say that it should be provided at all hearings.

The requirement that a motion has to be made within 30 days after access denial might be better worded if it refers to the last access denial. Intention to deny access, it seems to me, is usually repetitive. While there may be logistical and other problems associated with any one single access denial or failure to exercise access, going to court after the first incident would, in my opinion, be a waste of the court's time. It is the repetitive nature of parental behaviour that interferes with the child's access that the court should be concerned with.

An exception, of course, would be if one parent suspects that the other is planning an abduction and presumably has some evidence of this, but this is an area better covered by criminal law than by family law. So too, in my opinion, with physical assault and sexual abuse.

While physical assault against a spouse may be a significant problem in Ontario, it may be less of a problem against an ex-spouse. I have no research statistics on this and I would certainly like to see more research on it, but in my opinion, for example, an assault can be an isolated incident related to the trauma of separation. The threat of losing contact with a child in an unfavourable custody or access decision can be another trigger for potential violence, but a violent incident and a violent person are two different concepts. A violent incident of spousal assault should be dealt with in the criminal courts.

Where domestic violence is to be considered by a family court, only a repetitive history of assault against the other parent or one proven assault against a child should be considered by the court as a reason to deny access or custody to the parent who committed the assault. One or two isolated acts of assault between parents does not mean that either parent would ever be moved to assault the child or that the child's interests and welfare are better served by being denied access to either parent.

Instances of assault against other family members are even further remote from the interests and rights of the child, in my opinion. The focus of the court should be on any assault against the child, and secondarily, on repetitive assault against the other parent.

1650

The mandatory language should be retained for these types of assaults in Bill 124. Allegations of assault would have to be proven to the court, because the allegation alone should not be sufficient. But as it reads in subsection 24(3), I do not understand how Bill 124 guides the court to determine the manner in which the court can be satisfied that an act of violence has been committed.

For assaults against other persons, I would recommend that the mandatory language should be dropped such that "the court may consider" such assaults where the court is satisfied that they impinge upon the child's right to have access to a parent. I recommend that subsections 24(3) and (4) of the bill be reworded, so that past conduct and assaults against persons other than the child or the other parent are discretionary rather than mandatory concerns of the court.

The underlying philosophy behind these recommendations is that many good Ontario parents are capable of a violent act when their child or their relationship with their child is threatened. Some personalities direct their violent feelings inward; others outward. Who would not be unstable during what

is perhaps the greatest crisis a parent can have, surviving the loss of a child? The death of a child, losing custody and access denial all involve devastating emotions, except they are much prolonged in the latter cases. In all, there is a sense of loss, not of a possession but of a part even of one's psyche, if you like.

The representative from Mothers Without Custody was right: To me, custody battles are not only about children's welfare; they are about power. The custodial parent has the power. Custodial mothers would not tolerate what they ask access fathers to tolerate. It is only when mothers lose custody that they know how bad it is. Mothers without custody know that they are no more the authors of their own misfortune than access fathers. They know that access parents are single parents too.

They also have to resist the stereotypical labelling that there must be something missing in their capacity as nurturers for them to accept restrictions on their relationship with their children. Indeed, other submissions before you have practically painted all access fathers as undesirables, for ever to be monitored in their relations with their children. But as the Mothers Without Custody representative pointed out, some parents can choose to be an access parent to further their career or perhaps their education, but never dream that they would lose frequent or regular access. I suggest that the notion of the importance of regular and frequent access should be embedded as a principle in Bill 124.

Also, the role of the access parent must be more clearly defined. Can my 10-year-old son and I go to karate classes when his mother does not want us to? She has custody, and I have certainly respected her wishes up until now, but I do feel that my son and I should be able to do what we want as long as it is not injurious to my son. Bill 124 should make it clear to both the access and custodial parent who can do what with the child during access.

Also, I have regularly involved myself in teacher-parent interviews and other activities at my son's school, only to be shut out when it comes to decisions about what class he is attending; for example, French immersion. I have asked for copies of my son's report card for over three years through the teachers and principal at my son's school and I still have not got them. After all, his mother and myself are paying twice the taxes to the school board. Should we not be able to get two copies of a simple but crucial document? My cousin, who is an Ontario teacher, tells me that teachers in Ontario are instructed not to reveal certain information to access parents.

I can well ask what my role is with my child. I suggest that the role of the access parent is poorly understood by the parent and other parties and that the access parent often feels powerless. Children are sensitive to this. They feel the anguish, anxiety and frustration of the powerless parent. They become victims, in a sense, of this lack of definition. I believe the right of the access parent to information about the child from the custodial parent, from the schools and other professionals should be more elaborately enshrined in Bill 124.

I suggest to the committee that the parent-child relationship is everyone's first relationship, and in a sense it is more important than the spousal relationship, because a healthy spousal relationship depends to a significant extent on attitudes and behaviour developed in a healthy child-parent relationship. Of course, the harmonics of a healthy child-parent



relationship change as the child grows older, but they still depend, to me, on regular and frequent access.

As my son grows older, his access needs are changing. A month's vacation together, for example, may be better than a weekend together. At 10 years, his relationship with his peers is becoming more important to him. He has extracurricular activities in sports, but I drive him to those activities on my access day. I feel the access parent does not have to be cut off because the child has new interests as he grows older. This is a point that has been brought up in some other submissions before you.

I suggest that compensatory access may become a factor here, and this is one of the options in the bill, but I also suggest that the child who is 10 or older can easily provide input as to how compensatory time should be arranged. I therefore suggest that Bill 124 give acknowledgement to the fact that the views and preferences of most children 10 and over can be readily ascertained in most cases, and clause 24(2)(b) should be reworded to reflect this reality.

I do not know how much more time I have, Mr. Chairman. Have I already overstepped my bounds?

Mr. Chairman: I think you have two minutes.

Mr. Coupe: Well, I probably will not finish. There are a lot of points I would like to make.

Mr. Chairman: You started at 4:40.

Mr. Coupe: Okay. I am sorry I do not have a written submission, because there are several other points, but one I shall bring up now is the business of access parents coming on the access date. It seems to me that children are not always waiting with packed bags for the access parent. In my own case, I frequently had to pry my son away from TV cartoons.

I suggest that the one-hour time limit in paragraph 35a(4)4 is unworkable. The access parent is usually the one who has to provide and pay for all transportation. Anyone who has been stuck on Highway 401 or dependent on GO train schedules, as I have---this is from Milton---knows the logistical difficulties, especially in winter.

I would add a phrase to paragraph 35a(4)4 that says, "and did not telephone within one hour or provide a reasonable excuse for failing to do so." Certainly, the access parent may have difficulty getting there within the hour, or even in two or three hours, but can probably phone in a reasonable time.

I have several other points, but perhaps it would be futile to try to jam them in. Perhaps there are questions.

Mr. Chairman: We have a minute for a question. Who would like to ask a question?

Ms. Poole: You gave a number of quite interesting ideas, and I quite like some of them, like the opinion of the child if it is age 10 and over. We have heard that from several other groups. I am not so sure about others. One I did want to ask you about concerned the repetitive nature that the court should be looking at, as opposed to an isolated incident.

Mr. Coupe: Yes.



Ms. Poole: Could I take it from that that you would like to see Bill 124 amended in such a way that a parent could not go to court on just an isolated, single incident, that he or she would have to have some sort of repetitive nature or history of it in order to use Bill 124? Is that what you are looking for or suggesting?

Mr. Coupe: I think the option of the court should be available, but as I was suggesting earlier, perhaps if there could be an emphasis on mediation, the place to go after the first incident would be to the mediator and then the courts, it would seem to me, to avoid wasting the court's time; only when there is repetitive abuse.

Mr. R. F. Johnston: I just wanted to make a couple of points, because I found it very interesting and I would love to debate things with you. We do not have time. If it is possible that you could put a copy of what you presented and what was left in a form that you would be pleased to give to us, then the clerk can circulate that to all members and we would at least have the rest of your ideas that you wanted to present today.

Mr. Coupe: I would be happy to do that. I understood today was the last day for written submissions. Is that not correct? I will not have it prepared by the end of the day.

Mr. R. F. Johnston: We will not be meeting for clause-by-clause for some time. If you were to send it off to us, I am sure all members would welcome seeing the rest of your thoughts.

Mr. Chairman: You were here, and we would be pleased to read the balance of your submissions. Perhaps you can get it to the clerk's office over the next week. Thank you very much for coming.

Mr. Coupe: Thank you.

Mr. Chairman: The next presenter is David Blair. Mr. Blair, you were here yesterday, so I do not need to give you instructions.

Mr. Blair: That is right.

Mr. Chairman: But you are here as an individual.

Mr. Blair: That is correct.

Mr. Chairman: You have 15 minutes.

1700

DAVID W. BLAIR

Mr. Blair: I come today to coment from the viewpoint of mediator, therapist and educator. In the package that is coming around to you, there is one page of background which you may wish to peruse.

I would, first, like to commend your committee for its work on this area of concern and thank you for your attempts to address the problems inherent in access enforcement. Specific law on these issues is long overdue. I assume your goals are to ensure that children are able to maintain close, frequent and continuous contact with both parents after separation and divorce, to reduce access denial, if not eradicate it, and to try to redress any wrongs

from denial of access. If that is the case, we are all working for the same results.

Bill 124, although a step in the right direction, is unfortunately trapped as a reaction to already accomplished action. By nature of its position in the wider legal and social picture, it is a Band-Aid attempting to cover the surface symptoms of a greater underlying cancer fed by many facets of imperfect systems and approaches to dealing with marital breakdown.

Although I support a bill of this principle, I must urge you to consider giving it strength enough to have some preventive power as well as addressing the other weaknesses in other parts of the systems that support the ineffective approaches we now employ in dealing with the whole area of marriage dissolution. Each one impacts on the other and cannot be dealt with in isolation if we expect to prevent the cancer in the first place.

Ideally, we need to remove the imbalance of power that exists now. Noncustodial parents feel totally powerless in view of the apparent total power of the custodial parent. This is a major reason for conflict in custody and access cases, although not the only one. The old saying about power corrupts and absolute power corrupts absolutely becomes more of a reality far too often when sole custody is the case.

I fully recommend a foundational reform by instituting Bill 95 with a rebuttable presumption of joint custody; then no parent has a preconceived notion of more power than the other. It is amazing how courts view both parents as capable or acceptable while the marriage is intact but as soon as it disintegrates, one parent, usually the father, is suddenly less a parent than before. Joint custody would help to erase that erroneous assumption on which custody and access are presently worked out.

Mediation needs to be the first step in marital conflict resolution. If you are hit by a truck going home tonight, many support services will rush to the scene and minister to your needs until you recover from your injuries: ambulance, doctors, nurses, technicians, therapists, family, friends, police, insurance companies and others, as needed, help in resolving the problems.

However, if your marriage figuratively gets hit by a truck of problems, families are primarily thrust into a combative, threatening, destructive, nontherapeutic system called court. Somehow we have given control to a legal body when faced with a health problem and so they are forced to apply legal solutions to circumstances demanding, first, therapeutic remedies. The priorities need to be adjusted.

Proper mediation effectively creates personalized solutions to family problems in ways the court does not have the time, the flexibility or, more important, the environment to accomplish. Problems are solved by talking, not by isolation, as many lawyers recommend. Pre-mediation counselling defuses volatile emotional content and helps both parties adjust to the point where they can rationally negotiate fair settlements to family issues.

The adversarial approach produces wounding, while the mediative, conciliatory approach leaves room for compassion and healing. Therefore, I strongly support mandatory mediation as a first step to resolving marital disputes or matters before disputes arise.

Timing is crucial in mediation, as to when the client and mediator meet. The sooner the better; the most success occurs when clients have come before

consulting lawyers, seemingly because they have not been subjected to adversarial reasoning and are able to communicate with whatever margin of respect and trust remains. Once lawyers are involved, those factors are seriously diminished. Therefore, it is important that a strong message be sent to the legal community to notify clients of the mediation services in their area. When I ask clients how they found out about mediation, only about five per cent have told me that their lawyer has told them about it.

Mediation is ideal for most matters, but I have great reservations about its use in access denial matters. Why would someone who has already broken a court order and not been disciplined want to come to mediation? I am not saying it will not work, but I raise that question. My experience says that an immediate legal response is needed.

Discipline, to be effective in behavioural modification, must happen as close to the time of the offence as possible; it must be appropriate to the offence; the subject must clearly understand why it is being applied, and the discipline must be firm and decisive. In today's courts, timing is a lost cause in many cases. There is seldom any discipline given to mothers, but much to fathers.

Responsibility for one's actions is thwarted by slick or obscuring justifications of position and thus the offender does not see any need to change behaviour, especially if there is an eager lawyer handy to assist in the next denial by helping the client avoid discipline. Lawyers should be penalized if they do not instruct their clients to follow court orders. Then having done that, they should drop the client if the client continues to act in contempt of court orders.

We have minimum and maximum penalties for first, second and third offences for other areas of law such as drinking and driving. The psychosocial damage to the child, noncustodial parent and even the denying parent, although he does not realize it, as well as the ripples into the extended family, are of equal, if not more, seriousness. This is just another way of maiming and abusing people with the greatest effects on the child.

We need embedded a similar penalty system in this or whatever bill addresses denial of access so that people will know it is a serious offence. Maybe if the denying parent was subject to a \$500 fine for the first offence, \$1,000 for the second and custody reversal for the third, or some such system, there would be far more reluctance to treat children like poker chips in a game of chance or, worse, like tools of vengeance.

Willingness to access the child to the other parent needs to be a factor in determining custody from the start. Custody reversal, although perceived as a heavy measure, is needed as a final step to help hurting, wounded people see that they cannot emotionally react and deny children the other parent, just because they as the custodial parent cannot cope with the pain of memories that flood back, unrealistic fears, guilt, embarrassment or whatever other conscious or subconscious objections they think they have.

Research shows that the greatest fear children have is of losing a parent. Adult stress studies show loss of a spouse by death, divorce or separation has the highest ratings. Therefore, any act which breaks the close, frequent and continuous relationship between either parent and child needs to be thoroughly examined and dealt with swiftly, clearly and decisively.

Sacred cows such as maternal preference, tender years doctrine, status



quo, no discipline for mothers and the use of the court as a weapon, to name just a few, must lose their blind idol-worship value if the court system wishes to regain the confidence of the public.

Two other major influences needing purifying are the tendency to make laws to protect the wounded few who need that protection, but it is done at the expense and to the detriment of the rest of the population. Second, satisfying lobbies that stand to lose major incomes, votes or power should reforms occur does not inspire confidence in a government or any other body operating in that way.

Presently, we have judges admonishing couples to talk matters over and settle them maturely, which is an admirable-sounding, mediator-free request, but one if not both parents know that the club of the court is there if they want it and they would not be there in the court if they had not already decided to use it.

Opponents of joint custody and mandatory mediation quote stories of how it will infringe on their rights and how these measures will not work. They do not argue about how it infringes on the rights of their children or the rights of the other parent, grandparents, aunts, uncles or cousins. They do not realize that we are faced with two opposing systems, the one negating the potential good of the other: the former being the present adversarial system and the latter a combination of Bill 95 and a stronger access bill.

1710

With the adversarial system as the primary method of dealing with marital breakdown, introducing the mentioned alternatives to create a more therapeutic process is like trying to run a hospital that is being bombed by guerrillas. There needs to be a commitment to joint custody and mandatory mediation, wide public education, and have it be given a chance unhampered by access to adversarial process except as a final measure.

Regarding Bill 124 specifically: Although the length of time in a stable home should be a consideration, too often it is a bar to badly needed changes which for various reasons are never brought out in court. I believe it should be secondary to the child's wishes.

Domestic violence is one area where people need protection. I have no argument on that. We focus mostly on protecting women and children and almost exclusively ignore abuse to men. This not only creates a credibility gap between men and the court but also violates their rights to protection. Application of the law should be equal.

At the time of separation and divorce I am aware of cases where otherwise rational, caring people are so badgered, harassed, coerced and threatened that isolated physical contact occurs. This is different than repeated physical abuse and needs to be evaluated differently. Violence of this nature is not a valid reason for custody denial. Even violence confined to spouses is not sufficient reason to deny access. I have left out some words here. The argument basically is a spousal argument as opposed to a parent-child argument; it does not necessarily mean that the parent is violent towards the child because there have been some isolated incidents between the two spouses.

If we are assessing this behaviour, then we must also include female alcoholism, which is not a major factor in applying law now, and any other



behaviour that influences the growth of a child. As children use parents as models, all behaviour teaches something and ought to be considered regardless of the gender exhibiting it.

To avoid expensive forays in court and to give order and plans to new circumstances, it is recommended that days and times of access always be spelled out specifically as minimums, with extra times at mutual consent.

Fees are always a concern. Therapeutically speaking, there is a belief that if clients contribute some portion to counselling sessions they are more committed to working at it than if they are given a free ride. I firmly believe that each party in mediation should contribute a portion of expenses. Both financial and access time compensations are needed in any bill when access has been denied.

Mr. Chairman: Thank you for your presentation. Are there any questions? We have a minute or so. Thank you for coming on two different days and sharing your views with us.

Mr. Blair: It is important.

Mr. Chairman: Our next presenter is Howard Davy. Welcome to the committee, Mr. Davy. You have 15 minutes to make your presentation. You may leave some time for questions if you wish. I would caution you against making reference to any matters which are before the courts or could become a matter of dispute in the courts.

HOWARD DAVY

Mr. Davy: I wondered about that, because I am a divorced father, remarried now. Anyway, I have a problem with access to children of my first marriage. I am wondering—

Mr. Chairman: My caution is for your protection, not ours, if you have sought legal advice about what you are going to say here. We just do not want to see you get into any trouble. This is a public forum, so it is at your discretion.

Mr. Davy: You mean I could talk about my own case, or is that going to prejudice me—

Mr. R. F. Johnston: It is with some care that you should talk about your own case. If there is any chance it can come before the courts again, then you should be careful of what you are saying. Alleging motive by the other party, for instance, would be a very dangerous kind of thing to do in that the transcripts are available to the public.

There are a number of other things. The thing to know is that all the laws on slander and libel and that sort of thing will apply to things you say here. You have no protection here in terms of what you say in particular. That is all. So if you use the normal care you would use in any kind of public utterance about matters that are of concern to you, then you will be all right, but if you have concern about that, you should really talk to a lawyer.

Mr. Davy: I would like to state some things. It is going to be kind of hard for me to say anything without reference to my own history, because that is basically what I have to go by. I am sorry. Not being a lawyer, I am not too familiar with the rules; but if I say something about my case, would

that possibly prejudice the court against me? Is that the intent here?

Mr. Chairman: What you say here could become evidence in some future court case. We are not here to give you legal advice, but to caution you that you are in a public forum, you are on television. Every word you say will be printed and be part of a record.

Mr. Davy: Okay. Well, I am not worried about slander or libel against me, because I really believe everything I say is true. As far as my own case is concerned, I hope it would not hurt my own case, but maybe I will not get into too many details of my own case.

Mr. Chairman: Having give you the caution, we will leave it to your discretion, then.

Mr. Davy: I want basically to speak as a father. I have been separated from my ex-wife now since the beginning of 1982, actually the end of 1981. I have two children, and at the time of the separation they were three months and 19 months old. They live in Windsor, Ontario, so it is quite a distance from here. Ever since the separation, I have had tremendous difficulty in seeing my children. I just want the committee to know that, to give my experience, as a father I find the present laws completely unworkable as far as being able to see my children is concerned. I had a hard time getting any access at all from the courts in the first place, let alone trying to enforce the access.

When I first separated, my ex-wife just disappeared. I did not know where she was. Four months went by with negotiations between our lawyers before we could even try to work out any kind of access at all. These were children of a very young age and I was not even able to see them for four months. My lawyer advised me that I should just agree to whatever she said, because we could easily go to court and work things out later, so I agreed to a token access of three hours every two weeks.

The denial of access started right off the bat. She said the children were very sick; I could not see them. Before that visit she took the children out of the country. It has been a nightmare of different allegations. Finally, I went to court in May 1984. I had one day in court, maybe because I could not afford to pay much in lawyers' fees, and we spent the bulk of the day arguing about the support payments and property division. We spent two hours on access and the judge gave me only six hours of access, so right off the bat I could not even get much access.

What little access I did have I have not been able to enforce at all. On numerous occasions, talking about maybe 50 per cent of my access times, I have not been able to see the children at all. She makes up an excuse that they are sick. She has alleged all kinds of things I have done; the children's aid society has investigated and shown there is no evidence of any abuse. I tried to bring motions to enforce the access with contempt of court, and one time she just said, "Okay, don't bother with the motion. I'll let you see the children," and as soon I agreed, there was a problem again with access, as soon as she knew the contempt motion was dropped.

Another time my lawyer brought the motion in the wrong jurisdiction, because it was supposed to be brought in Windsor and it was brought in Toronto. Eventually I had to go on to legal aid. I am very grateful to have legal aid, but I have to get approval through legal aid for everything that is done. Legal aid recommended I wait and go to trial over the whole issue.

I cannot see any current legislation that allows fathers to see their children. It just is not working. I read over the current bill and I think there are really a lot of problems with the current bill. I think, if anything, it might make it harder for a father to see his children than without the bill.

1720

The bill seems to give a litany of different excuses why access could be denied. I do not see how anyone could get an order under this to see his children, because you sort of take your pick. We have eight here, and the mother is going to find something.

I also find it very disturbing that there is a provision in the proposed bill that the custodial parent can bring a motion for failure to exercise access. It is hard enough to exercise access. Take a person such as myself. I am paying very high support payments to my ex-wife. I have legal bills. I am basically almost bankrupt. It is a tremendous effort to exercise access, and if for some reason I cannot exercise access and she can bring a motion that I have not exercised access, it is like the nail in the coffin for access if there can be all kinds of motions brought for failing to exercise access.

Also, with this provision about motion re failure to exercise access, I think what will happen is that access will start to be exercised out of fear. In other words, a father will say, "Oh, my God, I've got to see my children, otherwise my ex-wife is going to bring some kind of motion against me." I think the whole intention of access should be that the father is seeing his children out of love for his children, not out of fear. He has to feel relaxed when he sees his children, and if there is this fear hanging over his head that if he does not see his children there is going to be a motion brought against him, then I think all hope of a relaxed visit is going to be gone for a father.

I also think that this limitation of bringing a motion within 30 days, even if the legislation was worded in such a way that it would allow fathers to see their children, which I do not think it is, is entirely unreasonable. It might be okay for someone who is very rich and can afford a lawyer and get into court right away, but my experience with lawyers is that it takes them sometimes weeks or even months to return a phone call let alone bring a motion in court.

I also feel that for anyone who is not rich and who is on legal aid, legal aid takes months or even a year before it will make a decision on funding a motion. For anyone who is poor, this is impossible. In other words, it means anyone who is poor and who is on legal aid probably could never bring a motion to enforce access.

I thought it was very sad that section 7 in this Bill 124 says a court can make an order that a father or noncustodial parent—I am referring to them as fathers, since that is what they usually are—cannot even communicate with his children. It sounds like, if a father has the bravery to try and see his children and bring a motion in court, he can get punished by not even being able to communicate with them. It used to be that a father could not even have access; now he cannot even communicate with them.

I have not seen my children since last August, although I would love to see them. What little thing I can do is maybe send them a letter, although I do not know whether their mother will ever let them see it, but I guess with

this it would be against the law for a father to send his child a letter. I think that is ludicrous.

Another thing: I do not know if the bill talks about it—I cannot remember all the details—but I would just like to share from my own experience that I do not think just listening to a child's opinion is something that can be given great weight.

I can take my own circumstances. I really believe my children are being told by their mother that I am a bad person and that they also know that their mother will reward them if they say bad things about me. So if they go and see an assessor, they are actually afraid to say anything good about me. They could not possibly say anything good about me; they are going to be punished for it. What their true feelings might be will never come out.

I think there has to be a recognition in law that a child deserves the right to be with his father and that if the mother has denied the father access and he has not had any contact with his child for maybe a year or six months, it is not realistic to think the child is going to have a good opinion of the father when he does not even have a chance to know the father.

Maybe I can just summarize by saying that I think there has to be a presumption in law that a father has a certain defined minimum amount of access unless he has been proven to be violent; I mean convicted of violence, not just alleged. I think that something like, for example, at least one weekend a month and at least a couple of weeks in the summer should be a minimum standard for access for fathers, and after that it is up to judicial discretion. I know from my case that here was a judge with whom we spent two hours talking about access, no witnesses were called, and he decided I only have six hours of access every other weekend. Six hours of access is not a long enough time to develop a relationship with a child so a child can know his father and for a child even to have the ability to make a decision whether he wants to see his father. I suppose that is basically what I have to say.

Mr. Chairman: Thank you very much for coming to the committee and sharing your feelings and thoughts and what you have experienced.

Mr. Johnston, do you want to start off the questions?

Mr. R. F. Johnston: You may be the last presenter before us but you have touched on some new points still that others have not touched on. I specifically think of some of the concerns you raised around the fear an access parent might have that his rights could be taken away if he is to move, and some of the problems in the 10-day and 30-day periods you raised.

Your concerns about subsection 36(1) are understandable. It is a very small changing of the present wording; those rights of a judge at the moment to basically stop people from communicating are there. In fact, one of the witnesses who appeared before us already has had one of those orders against her in a very broad-brush type of fashion. It would be interesting to see if there is any review of how that has been applied and what the premises for that have been, if there are any legal journals that have looked at that whole matter. It is such a draconian action, and one would worry that it might be used in ways that may not be frivolous or vexatious by a judge but may be a little too draconian for the instances one would expect that to be used for. I very much appreciated your coming and sharing your views with us.

Mr. Davy: With respect to that time limit, I might comment that, as



I said, I was really talking about a 30-day limit for bringing the motion being unrealistic. As far as enforcing the motion is concerned, if there was some effective enforcement provision in the act, which there is not, then I think a very fast enforcement provision is certainly necessary; whatever the courts could handle. I do not know whether the courts could handle 10 days.

Mr. R. F. Johnston: We certainly heard a lot of evidence that makes it sound quite improbable that they could handle it.

Mr. Davy: One other thing I wanted to say which I forgot to say is that I really think these access motions should be funded by, say, the Ministry of the Attorney General, the same way that custody enforcement is. There should be an access enforcement branch over there. I really think that. I think one of the main arguments why that should be so is that we are dealing with the interests of the children. I think society has a duty to the children to see that these are done.

I am a middle-income person, but I certainly cannot afford the litigation. As I say, I think it is tremendous that legal aid has come to help in my case, but it is a very long process to get legal aid, a very difficult process, and I think people would be better served through the Ministry of the Attorney General or some other ministry rather than through legal aid. As I say, I do appreciate the legal aid, though, at the present time.

Mr. Chairman: Mr. Davy, earlier on we heard from the Canadian Bar Association and we heard from lawyers throughout the four days. Their testimony was that there really is not a problem in Ontario for noncustodial access, that there were remedies within existing law and that we, as legislators, should not be too concerned about it.

1730

Mr. Davy: I totally disagree. I have been dealing with lawyers for so long, and I have dealt with a number of different ones. I think their hands are tied. I have even had lawyers tell me that they would love to do something to help me, but that there is nothing they can do. The laws as they stand right now really do not provide a remedy. I suppose not all lawyers agree on it. They have not been able to do anything to help my case at all, and I am sure there are many other fathers like me.

Mr. Chairman: To be clear on it, though, this bill attempts to deal with the enforcement of access already awarded. In your case—

Mr. Davy: In my case, I have access awarded already and I have not even been able to exercise the little bit of access, awarded by the courts, that I have already. I am dealing with the larger issue that there should be statutory minimum access. Even if the present system of access by judicial order and discretion, which I think is flawed, is exercised, I am convinced there is no possibility of enforcement against a custodial parent who is intransigent.

Mrs. O'Neill: I do not know exactly what Mr. Johnston was asking for, but if it is some sort of a reading or a compilation of cases where there has been a denial of any kind of access—is that what you are asking for, whether it be medical records, report cards? If there is such—what should I say?—a summary of such determinations, I would certainly be very happy to see it.

The reason I found that interesting when Mr. Johnston brought it forward was that many people beyond the parents have to deal with children. I am thinking now about school principals, guidance counsellors and medical doctors. In some cases these people are, as they describe, harassed by the noncustodial parent.

I feel if there were something we could provide—I am sure this whole series of hearings is going to be watched very closely by people like this—to help them to know why, how or what brings on that kind of denial of access, it would be helpful. I do not expect to go through every case of custody in this country, but is there a way in which some of that information could be determined?

Mr. Chairman: I was hoping that once we completed our hearing, we could take a few minutes before we adjourn our meeting today to give further direction to our researcher.

Mr. Davy: I was wondering if I could make one other comment; that is, maybe this lends weight to the whole idea of a form in a larger vein of having mandatory minimum access, for example, one weekend a month. I have been dealing with psychologists over the years, and I can even show you psychological reports where psychologists make blanket statements that are not supportive of fathers visiting children.

For example, one psychologist said that children under the age of six years old, as a general rule, should not spend any overnight time with the father in cases of discord between parents. Another psychologist stated that avoiding conflict between parents may be more beneficial to the children than visiting with the father. These are very disturbing statements to me because they are blanket statements. They are not just my case. These so-called experts do not really believe in the importance of a father seeing the children in many cases. As I say, I do not think it should be left up to judicial discretion or a psychologist's expert witness report. I think it should be ingrained in law that fathers have certain minimum access rights.

Mr. Chairman: Thank you very much for your presentation. We appreciate the effort you made to come down here and share your views with us.

Mr. Davy: Thank you.

Mr. Chairman: Members of the committee, that concludes our schedule of presenters for today. Mr. Sullivan has cancelled. We have had other requests to be heard. However, the committee decided to hear the people who were in by the deadline and those who had indicated to the clerk prior to the commencement of the hearings and we were able to fit in, so we are not able to hear any further oral evidence. However, I want to stress that all presentations made, written and oral, are given equal weight by the committee, and all recommendations submitted to us, written or oral, will be summarized by our researcher and presented to us at the time we consider this bill.

Before we adjourn today, I want to give the committee an opportunity to perhaps give any instruction to our researcher, because several weeks will pass before we meet again on this subject. Mr. Johnston, did you have some suggestions?

Mr. R. F. Johnston: First, I would just like to thank Ms. Swift for the work she has done. The information has been quickly and well compiled for us. It is invaluable to us at this point. I think the standard way of

compiling the reports that have been made to us and the recommendations would be the approach to take in all of this. I do not know if anything can be gained from a survey of the literature on the matter I was just raising and Mrs. O'Neill talked about, in case anybody has actually looked at any kind of analysis of how these kinds of judgements of noncommunication have actually been awarded. From the lack of research in general it sounds as if there is here, I am afraid we probably will not come up with anything on it at all.

Mrs. O'Neill: I know school boards have policies on dealing with noncustodial parents.

Mr. R. F. Johnston: Actually, that would be a very interesting thing for us to survey, to see how, as you put it, the other end of this, the various agencies, especially the education authorities, as alluded to as well here by someone, have refused information to people who have access but not custody. It would be interesting to have some—

Mrs. O'Neill: Information and entrance to premises.

Ms. Swift: Under the Children's Law Reform Act, of course, access includes the right to report cards and medical reports. What the policy might be from the ministry or in school boards, I do not know. Whether you want me to canvass those—

Mrs. O'Neill: I think Mr. Johnston and I are talking about those who are given no access, no communication, with a very, very stringent order to restrain. Is that not what we were speaking about?

Ms. Swift: Those are two different situations, though.

Mr. Chairman: I think the case that was brought out here was a case where a noncustodial parent had access and was not getting the report cards.

Ms. Swift: Those are two different situations. You are talking about one where they have access but may also have a restraining order against them. They do not necessarily go together.

Mr. Chairman: Any other direction?

Ms. Swift: Just before we get off that, I am not clear what it is you are after. If you are after cases that have dealt with situations where there has been a restraining order, I suspect there would be voluminous cases on that. I am not sure exactly how it is you want me to summarize those or categorize those or try to extract some principle from those.

Mrs. O'Neill: When you say restraining order, do you mean no communication at all, or is that just one of the—

Ms. Swift: That could be one term of the order. The restraint might be to any degree.

Mrs. O'Neill: I will leave it to Mr. Johnston to give direction on that, since he started this.

Mr. R. F. Johnston: I see what you are saying. This is to do with all restraining orders that might be applied, but it would not be very useful to find out the information about that.

Mr. Offer: It is putting it in line with the Family Law Act as it now exists. That is the reason for the amendment.

Mr. R. F. Johnston: The kind of language in it. It is certainly good to know there are some things that conform to the way other laws work in this proposed law. I am pleased about that.

Mr. Offer: It is nice to hear that, Mr. Johnston.

Mr. Chairman: I brought a little file down to keep all the things given to me, and I do not envy your task of trying to summarize all the recommendations.

Mrs. O'Neill: I guess we will leave this, because I really do not know what specific directions to give.

Mr. R. F. Johnston: On the other, I think there is something we can survey; not on the use of restraining orders, but if we have a particular institution like a school or a day care operation or whatever having its own rules of operation which preclude it giving out certain kinds of information that may be already authorized in terms of what is determined to be access by the act, that would be a very important thing to know, it seems to me--some of the nonlegal restraints that are perhaps being used on access parents, if that is the case.

Mrs. O'Neill: I know school boards do make their own policies on these matters. How closely they resemble the act is something I am not sure of. I am sure they have to submit these to the ministry.

Ms. Swift: I know there has been some difficulty in the sort of co-ordination with the Children's Law Reform Act and the Education Act with releasing information. I could look at that issue.

Mrs. O'Neill: That might be helpful.

Ms. Swift: And also the right to privacy.

Mr. Chairman: If there are no further comments, we will look forward as a committee to tackling this bill at some future date when we have time during the regular session. I want to thank the clerk, our researcher and the committee members for their co-operation during the four days of hearings.

Mr. R. F. Johnston: I just wish Mr. Carrothers had more questions, that is all.

Mr. Carrothers: Perhaps in the next round.

Mr. R. F. Johnston: We will hold you to that.

The committee adjourned at 5:40 p.m.



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S-58

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

SMOKING IN THE WORKPLACE ACT

MONDAY, APRIL 17, 1989



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Clerk: Decker, Todd

Staff:

Nishi, Victor, Research Officer, Legislative Research Service

Witnesses:

From the Ministry of Labour:

Sullivan, Barbara, Parliamentary Assistant to the Minister of Labour  
(Halton Centre L)

Clarke, Richard, Policy Adviser, Labour Policy and Programs

Blair, Robert, Senior Solicitor, Legal Services Branch

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Monday, April 17, 1989

The committee met at 2:10 p.m. in Room 151.

SMOKING IN THE WORKPLACE ACT

Consideration of Bill 194, An Act to restrict Smoking in Workplaces.

Mr. Chairman: This is the standing committee on social development, convened to consider Bill 194, An Act to restrict Smoking in Workplaces. This bill will be the subject of some hearings. The clerk on instruction from our subcommittee advertised in newspapers across Ontario and received input. The subcommittee had a subsequent meeting where we reviewed all of the requests to be heard and recommended a schedule for the week, as was circulated to you late last week.

Before we commence hearing our first witness, the parliamentary assistant to the minister, I thought we should take a couple of minutes simply to ensure that the committee is in accord with the schedule as outlined. Second, we have one matter of a logistic nature to determine as a committee: We have accommodated all the people who had requested to be heard up to the deadline advertised; however, some requests have come in between that date and now.

Last week, when we met as a committee on another bill, in that situation we asked the clerk if there was time available to fit those people in as well, but we used the commencement of the hearing as the cutoff and we did not receive any requests after that point.

We have three requests from people who wish to be added to the list. We think we can fit them in quite easily. Is the committee in concurrence with that?

Mr. Allen: Regarding the schedule you are referring to, I think we have the yellow sheet that tells us when we are meeting per day, but I do not think I have—

Mr. Chairman: Did everybody get a binder like this?

Mr. Allen: Is it in the front of this?

Mr. Chairman: It looks like this, Richard.

Mr. Allen: I went through it all last night, and I did not notice a schedule.

Mr. Chairman: It has "Agenda: 2 p.m." and then it has—Basically, I could outline it. We are hearing from the ministry's representative this afternoon. We would hear from delegations all day Tuesday and Wednesday. Thursday morning is kept clear for people who want to think about amendments or hold caucus meetings. Then Thursday afternoon we would commence with clause by clause, and Friday morning, if necessary, continue with clause by clause. That is the schedule I was referring to.

Mr. Allen: Okay, so Friday is an "if necessary" day?

Mr. Chairman: Yes. That was agreed upon at the subcommittee level.

Mr. Allen: Thank you. That was not in my package.

Mr. Chairman: Just to update you, does everyone have a package in front of them, because there have been some cancellations. Perhaps we could update you on those. Tuesday at 11:30 the corporation of the city of Ottawa has cancelled. Are there any other cancellations? No.

The three groups who have requested to be added since our deadline are Susan Daglish, executive director of the Allergy Information Association; Dan VanLondersele, chairman of the Committee of Concerned Tobacco Area Municipalities; and Roslyn Levy, a private individual.

In addition, I believe Mr. Miller had someone ask him to bring a request forward at the beginning of the meeting to be added.

Mr. Miller: As a new member to the committee but one representing the tobacco area, I would like to indicate to you and to the committee that the Ontario Flue-Cured Tobacco Growers' Marketing Board would like to make a presentation if it can be slotted in. I think they have sent a letter dated April 7, received April 10, to the committee. In my view, I think they would understand the bill and understand what we are trying to do around the province if they were given the opportunity to make the presentation before the committee and ask questions or have the members ask questions of them.

The other one was VanLondersele and his group, Committee of Concerned Tobacco Area Municipalities. He is the chairman. I think the advertisement went out—I am not sure what papers it was advertised in. After doing some research, I think it was only in the March 9 issue of the Simcoe Reformer in our area. I did not see it myself.

Again, the issue is a concern to my riding and to the industry. I would respectfully suggest that if there is a possibility of the board being able to meet before the committee, they are available on Wednesday and/or Thursday morning. I bring it to your attention to see if that might be possible.

Mr. Chairman: Thank you, Mr. Miller. I should inform you that the clerk reminds me that we did advertise in all dailies for two days in March.

Clerk of the Committee: One day, on either March 9 or March 10.

Mr. Chairman: One day. It ran either March 9 or 10 in all dailies, so that would have included the Simcoe Reformer.

Mr. Miller: I am really not complaining about the advertising. I am just making sure that people have fair input before the bill becomes law. I think this committee is the place to do that, some public-added input.

Mr. Chairman: Yes. I am not questioning that. I am simply informing the committee of the advertising process. For those people who may be watching, as well as for committee members who are here, of course, you know that written submissions are considered on an equal basis with the oral submissions. People can submit written until—What deadline have we put on that?



Clerk of the Committee: April 12.

Mr. Chairman: Until April 12. What is the pleasure of the committee with regard to these three requests which were given to the clerk and the one request we have heard from Mr. Miller?

Mr. Allen: I notice on the schedule that quite apart from the cancellation you indicated at 11:30 Tuesday, there are also potential four o'clock and 4:30 slots on Tuesday afternoon. So there are three possibilities already, out of the four that are—

Mr. Chairman: We could start one day at 1:30 instead of two o'clock and cover the other one.

Mr. Allen: That would be quite acceptable to me.

Mr. Sterling: I would like to hear from all the interests, and I am sure Mr. Miller's proponents' views should be put forward to the committee.

I am a little concerned about narrowing the gap in terms of the noonhour in that I have made some arrangements on the basis of this schedule, but I would be quite willing to sit later in the day.

I suggest we ask the two associations or groups that are representing numbers and try to fit them in first, as they represent a number of individuals or citizens.

Mr. Chairman: In terms of how we handled our other bill, we gave organizations a half-hour and individuals 15 minutes. We could tack on 15 minutes at the end of one day for the individual, and the three organizations could easily be given the three half-hour spots that are still available. Is that agreeable to the committee?

Perhaps we could either start 15 minutes earlier, 9:45 one day, or go 15 minutes later. The clerk will see whatever is best for the people involved. We will leave the noonhour clear, then, because I understand that members may have made other arrangements.

If that is agreeable, we do not need a resolution. We will do it by consensus, and we will commence our meeting this afternoon.

At this time I would like to introduce the parliamentary assistant to the Minister of Labour (Mr. Sorbara), Barbara Sullivan. I turn the floor over to you for your presentation on behalf of the minister.

#### MINISTRY OF LABOUR

Mrs. Sullivan: Thank you. I am pleased to have the opportunity to be with you today to speak on what I believe is an important piece of legislation. I would also like to introduce you to Dick Clarke from the policy branch of the Ministry of Labour and Bob Blair, who is the senior solicitor of the legal services branch with the ministry. He will be able to join us subsequent to my remarks to assist with initial questions which you may have on the bill.

Bill 194 reflects the growing concern around the question of indoor air quality and smoking in the workplace. The increased awareness of the relationship between individual health and the environment in which we live

and work has contributed substantially to the determined step the government is taking with this legislation.

Ontario is the first province to introduce legislation that regulates smoking in the workplace. I should tell you that this step will be seen across the country as a vital and important step as we move forward and, indeed, an example for other provinces to follow.

The basic premise of the bill is that nonsmoking is to be the overall objective in Ontario workplaces. The purpose of the bill is to provide workers in Ontario with an expanded opportunity to work in an environment which is free of tobacco smoke.

It is worth repeating the observation of the Canadian Cancer Society, which stated on the introduction of the bill that it was regarded "as a positive step towards the goal of making all workplaces smoke-free."

Physicians for a Smoke-Free Canada wrote the Minister of Labour and said that "Bill 194 is fundamentally good legislation," despite what the organization considers to be some weaknesses in the bill.

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On the same note, I want to acknowledge those employers, trade unions and municipalities which have already established the principle of smoke-free workplaces within their own jurisdictions. Bill 194 supports and enhances the efforts of these groups.

I would also like to note the success of provincial policies which came into effect at the end of March to make Ontario government buildings smoke-free. Bill 194 follows in the spirit of that particular initiative.

The government of Ontario, and specifically the Ministry of Labour, has an obligation to enact legislation that will ensure uniform and minimum standards which govern conditions of work in all places of employment under provincial jurisdiction. Bill 194 establishes the minimum standards in restricting workplace smoking. This bill will mean that 3.9 million workers employed in 233,000 of Ontario's workplaces will be covered by this legislation.

The central provision of Bill 194 is that nonsmoking is to be the overall objective in Ontario's workplaces. It is this feature which distinguishes the bill from the various municipal bylaws which require the establishment of designated smoking areas.

It is also different from the federal Non-smokers' Health Act, Bill C-204, which does not limit the area which may be designated for smoking. In contrast, Bill 194 establishes a general prohibition on smoking in the workplace, but does allow the employer the option of establishing designated smoking areas.

Designated smoking areas would be limited to a maximum of 25 per cent of the floor space of a work area. The designation of smoking areas is also governed by statutory obligation upon employers to consult with the joint health and safety committee or the workers' health and safety representative in establishing the designated areas. This obligation to consult will ensure that workers are provided a forum which can deal with the concerns of individual employees.

I want to remind you that the Minister of Labour (Mr. Sorbara) has proposed Bill 208, a package of amendments to the Occupational Health and Safety Act. This bill, as you know, serves to expand the role and the number of joint health and safety committees. Amendments to Bill 208 are included to extend the obligation to establish committees to all nonagricultural sectors, including retail and construction; to require a joint health and safety committee in workplaces with more than 20 employees; to require worker representatives in workplaces employing five to 20 employees; and to require more committee members in large workplaces.

Some 30,000 offices and retail outlets currently exempt from the act would be obliged to establish committees. An additional 50,000 workplaces would be required to have worker health and safety representatives chosen by employees. The result of that bill will be a broad network of joint health and safety committees capable of dealing effectively with a wide spectrum of health and safety issues, including workplace smoking.

In keeping with the flexible and practical approach taken by Bill 194, this legislation does not require the prohibition of smoking in areas of a workplace in which the public is served. This includes such workplaces as restaurants, bars, hotel lobbies, serving areas in private clubs and living areas of such facilities as psychiatric hospitals. The regulation of smoking in public places will continue to be in the hands of the municipalities.

To date, you may know that some 60 municipalities now regulate smoking in public places and have demonstrated a willingness and an ability to do so. There is nothing in the legislation which precludes an employer from prohibiting smoking in public areas of the workplace if the employer decides to exercise that discretion. Indeed, we have already seen those rules applied in many banks and other places, in institutions and in places like GO trains.

There is also nothing in the legislation that prevents local governments from establishing more stringent workplace smoking conditions. Bill 194 simply provides the floor, the basic standard, upon which municipalities may build.

The provisions of this legislation will be enforced by inspectors authorized under the Occupational Health and Safety Act. Some municipalities have been granted the authority to implement their own smoking regulations and others are interested in following this route as well. For that reason alone, it is important that we establish consistent, province-wide minimum standards in order to more effectively regulate workplace smoking.

I would like to address at this time what has been the main criticism of Bill 194, that is, the question of separate ventilation of smoking areas. I think that everyone recognizes that in many workplaces throughout Ontario tobacco smoke is but one of many substances affecting air quality. In some workplaces you will find ventilation systems which are second to none. To require the installation of additional venting would be unnecessary and unduly expensive. Furthermore, there are workplaces, such as auto plants, which enclose acres of floor space under one roof. The volume of air in such workplaces is sufficient to disperse and dissipate environmental tobacco smoke which may be present.

The broader question of indoor air quality must be considered as we examine the effect of tobacco smoke from what will be drastically reduced smoking areas. Indeed, the Office of Technology Assessment of the United States Congress published a staff paper in 1986 which stated that investigations of complaints about indoor air quality only rarely found



tobacco smoke to be the sole source of the problem. It would be unreasonable and unfair to require employers to install additional ventilation equipment to deal with tobacco smoke alone.

I would like to conclude my remarks by saying that Bill 194 is a significant step towards a smoke-free society. Again, on behalf of the government, I want to thank all of those groups and individuals that have taken the time to prepare submissions and will appear before the committee over the next couple of days to contribute to the process of discussion. I know that the Minister of Labour is looking forward to your deliberations and, ultimately, third reading and implementation of Bill 194.

Mr. Chairman: If you would like to have any of the staff from the ministry assist you in the answering of questions, they can take the chairs over there in the witness position or, if you want to have someone join you up here, we can arrange for the first chair over there to be used. Once they have arrived, if you could introduce them, we could proceed from there and take questions from the committee.

Mrs. Sullivan: To my left is Dick Clarke of the policy branch of the Ministry of Labour and to my right is Bob Blair, senior solicitor of the legal services branch of the Ministry of Labour.

Mr. Chairman: Welcome to the committee. Does that conclude your presentation?

Mrs. Sullivan: Yes.

Mr. Chairman: We are open for questions from committee members then. First of all, Mr. Allen.

Mr. Allen: Could I ask the parliamentary assistant if need be to refer it to Mr. Clarke or Mr. Blair, what the pattern of consultation was that lay behind the development of the bill. Who was involved in that, to what extent were research consultants outside the ministry involved and what research groups in the ministry were put in place to research the bill and bring it together in its present form?

Mrs. Sullivan: There was a route of consultation. I think I will ask Mr. Clarke if he would like to describe some of the processes involving both the minister and the ministry.

Mr. Clarke: Certainly. Bill 194 was developed in conjunction with and at the same time as what is becoming the Ontario public service policy with respect to smoking in government workplaces. There was an interministry committee that met over a period of about two years to look at various options and what approaches we might take with respect to the government as an employer and with respect to the legislation more broadly.

You may remember that about three years ago the Ministry of Labour published a report that had been prepared by Dr. House of our occupational health and safety division in which he basically reviewed the literature, the studies that had been undertaken to that point in time. The ministry relied on that. We also relied on the panel report on public health in Ontario to develop this bill.

In addition to that, from the time the Minister of Labour indicated in the fall of 1987 that he foresaw the government bringing forward



legislation with respect to workplace smoking, he and our ministry staff met with a number of interested parties with respect to the notion of doing something in the workplace, from the Flue-Cured Tobacco Growers' Marketing Board to the Non-Smokers' Rights Association, a number of health groups and so forth. That sort of formed the basis on which Bill 194 was drafted.

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Mr. Allen: Did those parties you referred to as interested groups include employers' organizations more generally than the specific group that you just referred to and either the Ontario Federation of Labour or various of the labour unions of the province with respect to their health and safety interests?

Mr. Clarke: Not in a specific way. You will appreciate that when either employers' organizations or trade union organizations have their meeting with the minister, they often have a fairly long list of items that they wish to discuss and on a number of occasions smoking in the workplace was one of those.

Mr. Allen: That satisfies me on that particular point. I do not know if someone wants to follow that up with a supplementary, but I want to come back to some other items.

Mr. Sterling: With regard to the consultation, you mentioned the nonsmokers' rights group. I was just wondering whether they were consulted as to the specifics put in the legislation.

Mr. Clarke: As it emerged in the bill itself?

Mr. Sterling: Yes.

Mr. Clarke: We met with the Non-Smokers' Rights Association on—I cannot remember the exact number of occasions, but several occasions. We certainly indicated in the course of those conversations the general way we were going. I believe they were well aware of the general direction in which the legislation was being developed, but of course they did not see a copy of the bill before it was presented to the Legislature.

Mr. Sterling: For instance, in terms of the major criticism of the legislation in terms of the designated areas, you did not discuss whether there would be separate ventilation required or not?

Mr. Clarke: If my memory serves me right, I believe we discussed at some length their view of what should be done or should not be done with respect to separate ventilation and we discussed the kind of direction we thought the legislation would take.

Mr. Sterling: Just at this juncture I do not have any more questions about consultation, but I notice that in preparation you included a copy of Bill 157, which is a private member's bill I had which dealt with a municipal option similar to the city of Toronto's. I think it might be helpful for members of the committee also to have a copy of Bill 3, which I introduced originally in December 1985, which more closely approximates what Bill 194 is attempting to do. That went through hearings, as we are going to go through, to dispute and try to deal with the issue of separating and ventilated/nonventilated designated areas, etc. I just throw that out. I think it would be wise to get a copy of Bill 3 as it was before we prorogued in February.

Mr. Chairman: When the clerk returns, I will ask him to arrange for copies of Bill 3 to be circulated to the members.

Mr. Allen: Following on that point, when I was discussing these hearings with various of the groups that wanted to make presentations, I was invariably asked whether it would be permitted to raise questions with respect to other smoking legislation, either private or governmental, that was before the House. I was told that in fact the signal had been given to those groups coming forward that they would be able to do that.

That being the case, perhaps it would be wise for Mr. Sterling's bill and my own aiming at the replacement, essentially, of the Minors' Protection Act, to be among our documentation, so that if groups do make reference to that in the course of their questioning, it is available to all members of the committee.

Mr. Chairman: So we could have yours circulated as well?

Mr. Allen: Yes.

Mr. Chairman: I did indicate that to groups that asked. We discussed this at the subcommittee, and as you know the Legislature has referred Bill 194 to us for consideration. However, I did indicate that, since the other private members' bills were directly or indirectly related to that, if a group wished to make reference to these other pieces of legislation as a part of their presentation, how they used their half hour is up to them. We showed the same latitude last week on Bill 124. There have been a couple of private members' bills that groups came in and made reference to.

I think it would be helpful for members to have those bills as part of their background package, but I want to make it clear that as a committee we are not dealing with those bills as such right now.

Mrs. LeBourdais: Mrs. Sullivan, this is more or less with regard to the enforcement. Since the legislation came into effect on March 31, I have noted with some humour and some sadness at the same time, government garages being used for those individuals who fall into perhaps what might be referred to as worst-case scenarios of people who have not been able to lick the habit yet, for whatever reason. I am just wondering to what degree enforcement will be put into place for those individuals, and to what degree it is being, for lack of a better word, policed.

Mrs. Sullivan: Thank you. Mrs. LeBourdais, I believe that you are referring to the government policy relating to Ontario public service workplace smoking rather than the content of Bill 194. The Ontario public service document is basically a government policy which applies to workplace smoking throughout the provincial public sector. It came into effect on March 31. There was a lead-in period wherein deputy ministers were able to develop, within their ministries, processes to assist workers to involve themselves in nonsmoking courses or other withdrawal courses. Additionally, there is a policy that there can be funding, at the discretion of the minister, to be contributed to that.

Bill 194, which applies to the broader public sector and the private sector, is a separate bill. The enforcement of that bill will be through the inspectors of the occupational health and safety division of the Ministry of Labour.

Mrs. LeBourdais: I guess, too, what I was wanting clarification on is: Would a location such as an underground garage affixed to the building still be considered the building?

Mrs. Sullivan: Bob Blair may want to respond to this, but I would expect that "an enclosed building or structure in which an employee works and includes a shaft, tunnel, caisson or similar enclosed space," would include an underground garage.

Mr. Blair: In many cases, certainly an underground garage would be included in the concept of enclosed workspace. I do not think underground garages were foremost in the minds of the drafters of the legislation, but if employees work in those spaces the act covers them.

Mr. Chairman: Mr. Allen: further questions from you at this time?

Mr. Allen: Pertaining to the question of ventilation: We will obviously get into this in the course of the hearings from various groups, but I wonder if we could be provided with the current standards for ventilation of workplaces. Clearly, if we are not going to be leaning on employers—and if this should be the upshot of the bill—to provide separately ventilated smoking areas, and we are not going to be requiring that separate workstations be independently vented, where people might be smoking at work, it is pretty important for us to be aware of what the actual quality of ventilation is that is required of workplaces at this point in time. It may well be that some across-the-board improvement in ventilation might be called for, perhaps through legislation other than this, but it would be appropriate for us, I think, to consider the present quality of ventilation as is required in workplaces, so that one can gauge what the possible impact would be of not requiring separate venting of designated smoking areas or of individual workstations.

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Mr. Clarke: If I might respond to that, we can certainly provide you with standards that exist. You will probably appreciate that, by and large, the approach is one of the controlled substance. You have threshold levels in terms of the particles that are airborne that relate to a particular substance. So those are the kinds of regulations we have under the Occupational Health and Safety Act. We can certainly provide all of those for the committee.

But in addition to that, I guess, it is very much a question of indoor air quality. I can tell members that there is a federal-provincial committee that has been working on this particular issue. Most of the studies have revealed that the problem—particularly in offices where we often get the complaints apart from your typical industrial setting—has as much to do with the maintenance of existing ventilation systems as it has to do with anything. At the moment, there are no maintenance standards that I am aware of. But we can certainly provide you with standards that do exist now.

Mr. Allen: There are no maintenance standards for office buildings as distinct from industrial workplaces? Is that what your last comment was?

Mr. Clarke: My understanding of the terms of standards of maintenance of the ventilation systems is that there are not any legislative standards at the moment.



Mr. Allen: I see. That is useful to know in itself.

Mr. Kozyra: I guess one of the reasons, maybe, this legislation was necessitated is that over the years the many programs aimed at youngsters in trying to educate them against smoking and so on have not worked as well as we might hope. I am wondering whether we have figures on government programs aimed at government employees—how many participated and what success rate you could indicate? I know it is rather early, but is the news encouraging or discouraging? I may be asking something that has already been covered, but it is my first day on this committee.

Mrs. Sullivan: No, I think that while it is too early to see what the success rate is of the Ontario public service smoking policy, there have been some interesting results out of the federal restrictions on workplace smoking. If I could find those statistics, I will be delighted—but one figure that comes directly to mind is that one out of seven people stopped smoking as a direct result of the federal restrictions. I do have other figures. I think that for people actually smoking 11 cigarettes a day, their smoking dropped to five, on average, in the federal situation.

It is too early to tell about the provincial situation. We know that there have been many private sector employers who also have designated their workspace as either smoke-free or have designated areas. My understanding is that they have seen a similar dropoff in the number of people who actually smoke.

Dick, would you like to add to that?

Mr. Clarke: I do not think I have any particular statistics. I am sure that some of the presenters who appear before the committee in the next couple of days may very well have their own. We can perhaps get some from the Ministry of Health which did a pilot project for a year or so before the Ontario public service policy came into place on March 31. So they may have some. But I think that what Mrs. Sullivan says is quite correct, that what the studies show is that if there are eight hours in the day in which your ability to smoke is either prohibited or restricted in one fashion or the other, that will by itself, of course, reduce one's smoking habit. Many people are able to use that to build on their own nonsmoking efforts.

But I would like to say that this bill is not aimed at that as much as it is aimed at trying to move another step towards creating workplaces that are free of tobacco smoke, rather than trying by itself to stop you from smoking.

Mr. Chairman: Mr. Kozyra mentioned that he was starting from ground zero, so to speak. We are all in the same boat. The committee has not discussed this matter prior to our meeting today. I should introduce Victor Nishi, who is the legislative research officer available to the committee. If between now and Thursday, when we are getting together to consider clause-by-clause, we require information, Mr. Nishi would be happy to try and assist us not only in putting together the information from the various briefs but also in gathering other information for us.

Perhaps I could mention as well that I am aware from the experience in my area that the Brant County Board of Education is the first board of education in Ontario to completely ban smoking on all of its properties. This was done, I believe, about four years ago, so it might have some kind of report on the results of doing that. Staff had to join students out on the



sidewalks if they wanted to have a smoke during the break. It is an interesting experiment and it seems to have been accepted by most people.

Mr. Kozyra: Just one final supplementary: I was interested in Mr. Clarke's final response that this legislation was not aimed at being a retraining program but more at defining where it can or cannot—I think an educational component really is an important one, whether it is in the Ministry of Labour, the Ministry of Education or the Ministry of Health, and it certainly should not be underestimated how important it could be.

Mrs. Sullivan: If I could just add to that, Mr. Kozyra, one of the things you may recall is Dr. Spasoff's report on health goals for Ontario. There were very definite targets outlined as goals for both young people and adults in terms of smoking. Whether this is the primary intention of this bill or not, I think we can see a good result that may be a side-effect.

Mr. Chairman: I hope I did not miss any hands. I had Mr. Owen and then Mr. Sterling.

Mr. Owen: I understand that the federal public servants' program regarding restricting smoking provided incentives to help certain people give up the habit or reduce their involvement in the habit. I am wondering, have we considered that? Do we know what sort of costs would be involved? Are we going to provide any incentives to the employers to help their staff participate in some sort of program, either with doctors or organizations that give that help? Have we thought about it? Is it possible, financially, for us to do that? What are we going to do? Are we just going to leave it to them to fare as well as they can by themselves?

Mrs. Sullivan: I think it is clear that the government has looked at incentives as an employer of its own people. In the drafting of this legislation, it was felt that the incentives, many of which have already been put in place by employers who have adopted similar workplace policies, were better coming from the employers.

Of course, it would not be appropriate for tax incentives to be included in a Labour bill. That may be a budget matter, if you want to talk to the Treasurer (Mr. R. F. Nixon) about that. In terms of this bill, the employer is the one who would take the initiative to provide any incentives.

Mr. Sterling: I would like to go through some of the sections of the bill and ask you some specific questions about them. I noticed that in terms of the legislative breakdown in our province, it seems to be that the responsibility for controlling smoking in public places has been left to municipalities and the province is taking a lead role in controlling smoking in the workplace. I laud that effort. I do not think someone who lives or works in one part of Ontario should be at a disadvantage because the municipality in which he or she is working is not regulated.

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One question I have, however, relates to controlling smoking in public transportation vehicles, in that public transportation vehicles by their very nature are crossing municipal boundaries all the time. Why did the province not take a step with regard to controlling smoking in that kind of mode? I realize many of the transportation companies have taken very progressive steps

in dealing with the problem, but notwithstanding that, I understand the federal bill dealt with that issue.

Mr. Clarke: First, there were a number of considerations. You are quite right, Mr. Sterling, that a number of transportation authorities have already taken steps to limit smoking either in their vehicles or on their property. What we were trying to do with this was aim it at workplaces, and obviously there are some workplaces that are also public places that have either already been regulated by municipalities or might be regulated in the future should municipalities choose to do so. That was one of our reasons.

Second, I guess, in terms of that vehicle, you have one person who is working and 40, 50 or 300 people who are not working and are being provided with a service.

Third, as I am sure you will also appreciate, in terms of jurisdiction the province has limited jurisdiction with respect to transportation. Interprovincial bus companies like Voyageur Colonial that provide a considerable service in this province, or even charter companies like Penetang-Midland Coach Lines, are subject to federal jurisdiction and federal regulation. In terms of provincial jurisdiction, it would certainly apply to things like the Toronto Transit Commission, but it already has a no-smoking bylaw in place, or GO Transit which has already gone nonsmoking.

In our view, those factors all played into the consideration of staying away from vehicles, including public transit vehicles.

Mr. Sterling: The anomaly, of course, is the recent problem with taxis in Metro Toronto. Basically what you could have is a situation where a Metro Toronto taxi would cross the borderline into another place and everybody could light up as they got out of the city. That, I guess, would exemplify why in fact there might be a case here for the province taking a lead.

I will go into another area, the criticism of the bill in relation to the designated area. What happens in a situation—let's take a small employer in particular—where in fact the employer is a smoker. It is a very small shop and there is one nonsmoker on the premises. Through various nefarious means, the employer designates most of the area where people are actually working as a smoking area and this nonsmoker is suffering from ill-effects. The employer forms a committee or whatever it is and the committee decides that the most habitually occupied area is to be the smoking area, the 25 per cent area.

What can that nonsmoking employee do to protect himself or herself on a day-to-day basis if the employer has made this decision? Does he have a right in law to go to the courts to guarantee that he has a smoke-free environment? Does he have a right in terms of our labour laws to go to the Ministry of Labour and have the Ministry of Labour order the employer to provide him with a smoke-free environment?

Mr. Clarke: First of all, I cannot say that kind of scenario is impossible, but it sounds to me like it is fairly highly unlikely that you are going to have a work area such that the people already only work in 25 per cent of the space and nobody works in the other 75 per cent of the space. I think the scenario is a little difficult to imagine, but if it should occur, workers have already up until now been able to call the Ministry of Labour. We have sent inspectors who have gone in and resolved disputes between smokers and nonsmokers and employers without the existence of this bill.

That will still be doable under this bill. They will obviously undoubtedly claim that 25 per cent is not being adhered to. They could certainly make a complaint to the Ministry of Labour.

I think that whether they have any legal recourse is an open question at the moment. Under the Human Rights Commission, they might have a case to say that their sensitivity to tobacco smoke is going to require them to quit or something and that there is a duty on the employer to accommodate what for them is a disability. I think that is a possible argument. Who knows what the commission or the courts would do with that.

Mr. Sterling: Does this legislation spring any new right?

Mr. Clarke: This legislation does not spring a new right.

When we drafted the bill, we of course had the experience of the city of Toronto bylaw. I do not remember whether it was Bill 157 or Bill 3; I think one of your private member's bills had a provision that would have allowed an individual worker who was dissatisfied to effectively dictate what the policy would be in the workplace. This bill does not do that. This bill leaves it up to the joint health and safety committee to work out with an employer if there is such in place.

Mr. Sterling: When you say 25 per cent of the workplace, does the bill envisage taking the total plant or building or area occupied by the business and then saying that you can designate 25 per cent of that total area, or do you take one enclosed room and say that you can designate 25 per cent of that one enclosed room?

Mr. Clarke: I am going to ask Mr. Blair to respond.

Mr. Blair: I believe either one of those scenarios is possible. An enclosed workplace could in some cases just be a room. But as I interpret the definition of "enclosed workplace," if there is a building in which an employee works, that entire building is the workplace. There may be cases where you have an office in an office building with just a single large room; it will be an enclosed workplace in that circumstance.

Mr. Sterling: I guess what I am again thinking about is the situation where, by the nature of the operation, it is a large area and there is a lot of storage of inventory or whatever in order to carry on business. Do the storage areas count as 75 per cent of the area?

Mr. Blair: I think the answer to that is definitely yes. Presumably employees work in the storage areas—

Mr. Sterling: Yes, they would.

Mr. Blair: —even if they do so less frequently than they work in other areas.

Mr. Sterling: So you could have the scenario, for instance, in a lot of businesses where they could just designate the inventory or the storage space as the 75 per cent and all of the office space would be a smoking area.

Mr. Blair: There is nothing in Bill 194, as it is presently written, to stop that from happening. As Mr. Clarke says, those scenarios could happen.



Mr. Sterling: Another question I had—I believe the minister said and it is contained in section 10—is that if this act comes in conflict with the city of Toronto smoking bylaw, which act takes precedence in that particular situation?

Mr. Blair: The way subsection 10(1) is structured, whichever provision is the most restrictive of smoking prevails. In other words, Bill 194 presents a minimum, but if the municipality sets up a scheme that is more restrictive, it prevails. Bill 194 is not supposed to get in the way of those kinds of initiatives.

Mr. Clarke: If you use a particular example and you take the city of Toronto bylaw provision, which provides that if a single worker objects to the area that has been worked out as being the designated smoking area, then that right to object would apply because that would be read as being more restrictive than Bill 194.

On the other hand, the requirement in Bill 194 that at maximum you can have 25 per cent of the workspace as a designated area would apply, because the city of Toronto bylaw has no restriction on the amount of workspace in which you can have a smoking area. So we are trying to get the best of both worlds in those kinds of cases.

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Mr. Sterling: Therefore, Bill 157 would in no way conflict with what Bill 194 is doing. I would take that as a conclusion, because Bill 157 allows other municipalities to do what the city of Toronto is doing.

Mr. Clarke: So does Bill 194.

Mr. Blair: The idea of Bill 194 is that nothing in it prevents that from going ahead.

Mr. Sterling: From Bill 157 going ahead.

Mr. Blair: Yes.

Mr. Sterling: Yes; okay.

Mrs. Sullivan: I think it is important, though, that Bill 194 is a province-wide, minimum-floor standard, and that is the key philosophical thrust.

Mr. Sterling: Yes, I understand that, and I think it is worth while in terms of that point. It is just a matter of whether or not it has any real effect. You may have heard me during second reading on this particular bill—and I guess in a bit of political rhetorical comment—compare this to the situation where we had Les Nessman in WKRP, who was very aggrieved that he was not given an office and therefore painted yellow lines on the floor and made people who came into his office come through the open part where he did not have a yellow line painted across.

That actually emanated out of the tobacco producers sending around a pamphlet, which sort of gave me the idea of what they were suggesting: how employers could get around this present legislation if Bill 194 went through. Is it in fact true, then, that an employer could say, after consultation, "Well, we will paint a line down between these two desks, and on the one side



we will allow employee A to smoke, and for employee B, who sits immediately adjacent within a foot or two, we will designate that the nonsmoking area, but the other area will be the smoking area"? Could that happen under Bill 194?

Mr. Clarke: Yes, it could happen. What we were attempting to do in Bill 194 was to maintain as much flexibility as we could for each workplace, if they were going to have the smoking area, to work it out in a way that would work in that particular workplace. As you will know, effectively, in a number of public places like restaurants—what restaurants have said is, "That corner of the restaurant floor, tables 5, 7, 9 and 11, will be smoking tables or nonsmoking tables, whichever, and the rest of the space will be the reverse." For the most part, that works.

If an employer has a large, open-office setting—to use that kind of a setting—the employer could, if it worked out with the employees, say: "In that half of the room, people who are going to smoke at work can smoke. It is within the 25 per cent. The remainder of this large, open area will be nonsmoking." It is the same on a plant floor: when you have several acres, or even an acre, under one roof, it would be the same sort of thing.

There are a myriad of different kinds of workplaces in Ontario. We were trying to allow each workplace the flexibility, as I said, to work out what it wants. My sense, though, is that given that this has some flexibility to it, we are not going to find employer resistance and we are not going to have—I am not saying nobody—many employers trying to get around the bill should it become law.

Mr. Sterling: How does the employer establish where the smoking areas or the nonsmoking areas will be in the future? Is he required, or is it envisaged under the regulations of the act? No, they are there only for signs, I guess. How do they establish whether that room is nonsmoking or smoking? Does he have to file or a floor plan? How does he establish exactly what it is?

Mr. Clarke: If there is either a health and safety committee or a health and safety representative, the employer would sit down with that committee or that representative and say, "This is what I propose to be the smoking area." I think a lot of places of work in Ontario have already worked that out. Management and workers have just sat down without this bill in place and worked out something that seemed appropriate and suitable in their particular workplace. So they will just continue to do that.

Should somebody complain to the ministry, an occupational health and safety inspector would go in there to confirm that the 25 per cent rule is being abided by and, if the consultative mechanism is required in that circumstance, that it has been properly followed and that sort of thing.

Mr. Sterling: I guess my concern is the slippage in between the time when the employer might say, "This area is going to be and this area isn't going to be." Would there be any objection or can you see some kind of an objection to requiring the employer either to post or to file or in some way designate in writing exactly which area is smoking or nonsmoking?

Mrs. Sullivan: I wonder if I could be a little helpful here. I think one of the things that has been important in the drafting of this bill is to recognize the differences in the workplace. I think if we look back in terms of employers who in the past have regulated smoking in the workplace, we see that a long time ago there were restrictions on smoking in case of fire, in case of product purity and in case of protection of equipment on some sites.

This particular bill is looking further into the particular air quality and safety of the worker from that perspective.

But in those other instances, the areas where smoking was allowed or not allowed had to be specifically designated and designed to meet the particular requirements of the workplace. A pharmaceutical plant is clearly going to have a very different aspect than an auto plant, by example. There will be provisions that are more suitable, depending on the kinds of specifics of the workplace. So the broadness, I think, may be criticized, but it also may be necessary to ensure that we have the kind of compliance that we want with this act.

Mr. Sterling: My argument is not that one workplace should be like the next workplace. All I want is certainty as to what is and what is not a smoking or a nonsmoking area. I am concerned that today you may have a nonsmoking area, but tomorrow when the inspector arrives, there is a dispute that in fact this is a nonsmoking area. How does the inspector enforce in any meaningful way if there is not some kind of evidence for him to go on? But at any rate, I expect we will be raising that during the hearings.

In terms of enforcement of this act, who is responsible for enforcing it and how are persons brought into the situation?

Mr. Clarke: Let me start and then I will turn over the microphone to Bob Blair.

The primary responsibility under this bill for ensuring that whatever smoking policy that flows from this and is adopted is maintained rests with employers. Obviously, in terms of the employers' employees, whatever decision is made, whether it is to go with the bill and not have any smoking area at all, that is, to prohibit smoking, or whether it is to designate a particular area as a smoking area, that would become a matter of company policy or a policy of whatever the employer is, whether it is a company or some other kind of organization. Your normal disciplinary rules would presumably be in place if you break company policy.

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Failing that, any person, the employer or another employee, could make a complaint to the Ministry of Labour and a Ministry of Labour inspector can come in. At this point, I will ask Bob just to comment on the sort of provisions of the bill with respect to that part of the enforcement.

Mr. Blair: It is very analogous to what inspectors currently do in enforcing the Occupational Health and Safety Act. An inspector can wind up at a workplace in a number of ways. He or she can be responding to a complaint, can be there on a routine inspection or can be there investigating an accident.

The ministry foresees that in most cases our inspectors are going to be responding to a complaint when they are enforcing this act, but not necessarily in every case, because they are routinely present in the workplaces. An inspector who observes clear violations of this act is probably going to do something about it.

Inspectors have powers to make orders: order employers to take steps to comply with legislation. They can also recommend prosecution of employers. We envision that there might be some prosecutions against employers for failing

to make every reasonable effort to ensure that no person contravenes subsection 2(1).

If regulations are enacted in terms of posting designated smoking areas, we anticipate that there could be prosecutions, usually initiated by our inspectorate, against employers who have not complied. As you can see in section 8, there are fines provided for, up to \$2,000. There may also be cases where an employer disputes an order that an inspector has made or perhaps an employee disputes the failure of an inspector to make an order, particularly when and if there are requirements for signs to be posted, and that kind of thing. There are appeal procedures in the Occupational Health and Safety Act where aggrieved parties can go and appear before someone called the director of appeals. He can substitute his own decision for that of the inspector.

Mr. Sterling: You mentioned that they made regulations with regard to requiring the area to be defined by the employer: the smoking and nonsmoking areas. Am I correct that we would require then an amendment to the act as it is now proposed? Under section 9 you can only make regulations prescribing signs and providing for their use. There is no power in there, I believe, for the Lieutenant Governor in Council to make regulations to require the employer to file a map or a floor plan at the present time. Is that correct?

Mr. Blair: That is correct. The only reference in the act to plans is in clause 6(2)(b). An inspector "may require the production of any drawings, specifications or floor plans for an enclosed workplace...and may inspect, examine and copy them." We do not see that as requiring them to make special drawings for that purpose. It just says that if such drawings exist they may be of assistance to the inspector and they have to be produced, but right now there is no requirement for there to be written plans.

Mr. Sterling: Nor does it say in that section that they have to designate which are smoking or nonsmoking areas.

Mr. Blair: No. They may designate an area, and until there are regulations about prescribing signs and providing for their use, it is left to an employer to determine the means of designation.

Mr. Clarke: If I might just comment on Mr. Sterling's point: I have to say that I do not think the Ministry of Labour is anxious to have a copy of every floor plan from every employer in this province. You may remember that we have some floor plan provisions with respect to the workplace hazardous materials information system legislation that was passed by this Legislature once and amended a bit in the last year. I do not think we would want to go beyond that, in that the paper burden for the ministry would be considerable.

What we do need, and that is why we have it in section 6, is the ability for the employer to designate smoking and nonsmoking areas. If they have done that, but if we automatically had thousands and thousands of floor plans flowing into the ministry, I am not sure where we would put them.

Mr. Sterling: I agree with you. I do not think there is any need for that. I guess what I want to make sure is, number one, as I read clause 6(2)(b), all you can ask for is a floor plan or a drawing of the floor plan. There is nothing in there which says the employer has to mark on it what is smoking and what is not smoking. I guess I would like some requirement to be made of the employer to produce that for his employees, so that they would be



protected and he could not say, "The smoking area has changed since last week, because of the whim of somebody else in the plant."

Mr. Chairman: Mr. Sterling, I did start to get some other names. I am wondering if we could go to some others and then come back to you.

Mr. Sterling: Okay. I just have some questions about the penalty sections. That is all.

Mr. Chairman: We will come back to you then. Mr. Owen next.

Mr. Owen: Like other members of the committee, I have had different individuals and organizations approach me about this. They generally approve of what we are doing as a first step, but they feel that they will not be satisfied until there is a complete ban or unless there is ventilation to allow for it.

With that in mind as what they are working towards, is there anything being done now about new construction of workplaces with regard to ventilation, or what is perceived as being the thrust of where society seems to be going, according to these people who have met with me? What steps are we doing to see if this is down the road? Are we going to be in the same predicament of saying, "Well, it is going to be too costly to expect it now"? Are we suggesting any criteria now for the new workplaces coming into existence?

Mr. Clarke: Certainly not by this bill.

Mr. Owen: No, no. I know it is not here. Is it anywhere else out there?

Mr. Clarke: No. To my knowledge, it is not. As you will appreciate there are myriad regulations that regulate the design of a building, building codes at every level, a mile long if you stack them up. What I am hopeful of is that the federal-provincial committee that is working on indoor air quality can come up with some approaches to improving indoor air quality that can be implemented from coast to coast, as we were able to do with the workplace hazardous materials information system. As you may or may not know, that took about seven years of consultations with industry and workers' organizations to come up with something that everybody could agree on. It is not easy to do.

Mr. Owen: Do you have any idea of how far away that might be?

Mr. Clarke: No, I do not.

Mr. Owen: Okay. The other aspect then of my question is—I appreciated Mrs. Sullivan's saying that it would be incredibly costly to expect whole new ventilation systems to be put into place, with workplaces as we have them now—do you have any figures or any information as to workplaces that are equipped for ventilation now or that are not? Do you have any idea whether it is half of the industries in this province that could accommodate separate ventilation, or 25 per cent, or 80 per cent or whatever?

Mr. Clarke: It will obviously vary. As Mrs. Sullivan said in her remarks earlier, I believe, when we commenced this afternoon, there are clearly a lot of industrial workplaces that have incredible ventilation systems. The mines that are covered by this legislation have incredible ventilation systems. Despite problems, office buildings that are hermetically



sealed have incredible ventilation systems in them. Whether they are operating as well as they should is another issue, but they are already there.

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Other workplaces may have no ventilation system at all: To take it to the point of ridiculousness, the little shack the parking lot attendant is in with the wind blowing through the door, right? Vehicles have air conditioners and windows you can roll down and all those wonderful things.

In terms of buildings, it really does vary. I know we were looking just as an example at one building around Queen's Park to put separate ventilation into a smoking room; it would run somewhere around \$70,000 for one committee room. It would vary: In other places it may be less; in other places it could be considerably more.

There are also systems on the market, the so-called smoke eaters, air cleaners, air purifiers that are being used in other settings to try to combat tobacco smoke, particularly where it has been heavy, in bingo halls and that sort of thing.

It will vary with the situation, with the kind of building, with the existing ventilation system, the kind of construction, but it can be quite expensive in some situations and completely unnecessary in others.

Mrs. Cunningham: I am wondering what kind of rationale went into the figure of 25 per cent.

Mr. Clarke: We were looking for something that provided workplaces with flexibility and was reasonable, but no more than that.

Mrs. Cunningham: Does it not have anything to do with the number of people working in a building or the density of the workplace?

Mr. Clarke: No. As you will appreciate, this bill provides a minimum standard that applies across, as I have just said, an incredible myriad of work settings. What we were trying to do was to go a bit further, if you like, than the existing bylaws that have emerged in Ontario and provide at least some limit on the amount of the area of the work space in which the employer could allow smoking, and that is all. The 25 per cent was reasonable. There is nothing magic in that figure.

Mrs. Cunningham: In the backup, we talked about three municipal bylaws, I think: Toronto, Markham and Etobicoke. Was there any reason for including those as opposed to others? What is your experience?

Mr. Clarke: They are the only three that I am aware of that deal with smoking in the workplace. They are the three that sought legislative approval to regulate smoking in the workplace to date and that is why we included them.

Mrs. Cunningham: I will save my comments for the people who appear before the committee, Mr. Chairman.

Mr. Chairman: I have two other persons down. I am just letting you know in case there are others I have missed: Taras Kozyra and then Ron Kanter. If I have missed anyone, let me know.

Mr. Kozyra: I guess this is more of a comment. It is on the ventilation issue, because to me that perhaps is the most important aspect of this, whether it is effective or not. It touches on what Mr. Sterling raised in terms of how these areas will be designated, whether the 25 per cent are enclosed areas or not and what ventilation applies there.

A lot of the kind of legislation we have or what we experience in designated areas, whether it is in restaurants or the airlines or so on, in my estimation is a false sense of security. I go back to my university knowledge of chemistry; I think the molecular theory of distribution in gases. It indicated that if a room is enclosed—let's say the ultimate example, no ventilation—even if you light the cigarette in that corner designated as the smoking area, in due course the entire room will have an equal distribution of that cigarette smoke, and it does not take very long. Therefore, these designated areas where there are only imaginary boundaries are not very effective. They may be good for the public sense of security that something is being done, but in reality they are not.

I think the point of what enclosed areas are, what those designated areas are, how they are monitored and what ventilation is, in effect is extremely important. I think it is the most—

Mr. Chairman: Did you have a question?

Mr. Kozyra: No, I was going to say that was my comment. Thank you.

Mr. Chairman: I guess the question is: Do you have any reaction to that comment?

Mr. Allen: I can supplement that, then, perhaps to make it a little more specific. Was there no consideration given at all to whether a workplace did in fact have a ventilation system or not in designing the terms of the bill? Will there be regulations accompanying the legislation? A general bill like this can give rise to a multitude of very specific regulations that might interpret what is meant by a whole a lot of things within it. Is there some contemplation that the regulations will, in fact, define what this 25 per cent means, what "designated" means, whether it applies equally to workplaces that do have a ventilation system and those that do not have a ventilation system?

Certainly what Mr. Kozyra said with respect to distribution, whether you have a ventilation system or not—Even a ventilation system may more efficiently disperse the pollutant in the atmosphere and make it equally available to all persons in the enclosed area so that what might be contemplated by way of regulations would be pretty critical with respect to how this section applies and how it affects people. Can you give us some response to some of those particulars?

Mr. Clarke: Mr. Allen, the bill as it appears before you has only one regulatory-making power. That is with respect to signage around smoking areas. The bill, as you will all appreciate, is a very short, succinct bill. In our judgement we did not need regulatory power to go beyond what the statute said in terms of designated areas. The bill is absolutely silent on the ventilation question.

Mr. Allen: So basically what we see is what we have got—

Mr. Clarke: Yes.

Mr. Allen: —and what we are going to get as far as this legislation is concerned.

Mrs. Sullivan: Once again, though, just on that point, Mr. Kozyra, I think my previous remarks about the uniqueness of each workplace are really significant in terms of looking at the ventilation question as well, or the enclosed space. If, by example, in a broad, open-aiired plant like the Ford plant in Oakville, there is a designated area at one end of the plant it would not necessarily have to be enclosed because of the broad space that would assist with the dispersal of the particles. In another circumstance you may want an enclosed area with a different situation. As a consequence, the broad wording really does assist us in making this the basic standard province-wide.

Mr. Allen: That is a puzzling answer, Mr. Chairman, because if there are no further regulatory definitions and nothing goes beyond the terms of reference of this bill then it does not matter what the uniqueness of any workplace is; it will not be affected by the bill anyway, because there is nothing in the bill that can require it. I am not sure what the parliamentary assistant is telling us in that respect.

Mr. Chairman: I am sure we will have ample opportunity for debate when the time comes.

Mr. Kanter: First, I must say I have been very impressed by the technical skills, knowledge and abilities of my colleagues. I did not take chemistry in university. I think I may have taken it in grade 12 or something like that.

I do have a question or two on the designated area approach, both of this legislation and also of any other legislation that might take the same approach. I have several questions of staff about the designated area approach. It is my recollection—I am not positive about this—that the city of Toronto has several bylaws in the nonsmoking area, one for workplaces which takes a slightly different approach, a smoking policy or a combination approach, rather than a designated area approach. I think the city of Toronto has a nonsmoking bylaw in restaurants that takes the designated area approach. Is that generally correct? Do you have any information about that?

Mr. Clarke: I do not have with me the city of Toronto public-place bylaw, but I believe you are quite correct that it has required, under that bylaw, that restaurants, bars and so forth, certain public places, set aside areas they designate as smoking areas.

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Mr. Kanter: And it is something like 25 per cent. I cannot recall if it is 20 or 25 or 30 per cent, but it is something in that ballpark.

Mr. Clarke: It is in that vicinity. I do not remember exactly, either.

Mr. Kanter: I do recall being a member of council at the time that bylaw was being considered. Basically, we had two kinds of concerns. The restaurateurs, the employers, for their part, were saying this was a bad idea, that it would drive away business. Some people very concerned about limiting or banning smoking took the view that there would be all kinds of ways of getting around the designated area, that a restaurant or an employer would put a little sign on a table if you happened to be smoking there and if you wanted



to smoke somewhere else, he would put the sign there. Basically, this would not be very effective and there would be lots of complaints and no means of resolving them.

Very broadly speaking, have you had any experience with this kind of bylaw, either in the city of Toronto or elsewhere? Has it proven relatively effective? Have there been many complaints with the designated area approach either in the city of Toronto or, for that matter, in other jurisdictions where it may have been put into effect?

Mr. Clarke: The approach of requiring a part of the place to be designated is fairly common, particularly in public-place bylaws right across the country. Indeed, if my memory serves me correctly, it is an approach that has been used in a number of pieces of legislation in the United States as well. I am not aware of any particular problems with that. I am sure that there have been instances here and there, around and about, where somebody operating a public facility like that has objected to it in principle and has made it difficult. But I think you will all know from your own experiences in the course of your everyday lives that that approach, where it is in place, seems to be working without any particular problem. Restaurants will set aside a part, bars will set aside a part and you even get sports stadiums where a part is nonsmoking and a part is smoking. It seems to be working and I am not aware of any particular problems with that approach.

Mr. Kanter: I appreciate that there is a distinction between workplace legislation that would be administered by your ministry and what we might call public-place legislation, and I am not sure who might administer it. If I or another member of the committee wanted more information on how well these things worked or problems that arose with them, would people in your ministry be generally familiar with them or would there be anyone else in any other branch of the provincial government who would be more familiar with the sort of designated area approach and how well it has worked?

Mr. Clarke: I do not know if anybody would be particularly more familiar. There was some considerable work done by the Ministry of Health and the human resources secretariat. They worked on the Ontario public service policy and they may have something in addition to what we have. We could certainly check with them if the committee members wanted to see what information we could provide to the research officer.

Mr. Kanter: I suggest that I think that would be useful. I appreciate the information that has been provided. I realize it is a variation of the subject, but I certainly would like to see any information that might be provided on the effectiveness of what I am calling the designated area approach. It might be of interest to other members of the committee, as well. If we could request Mr. Clarke to provide us with any information he might have on the designated area approach, either within his ministry or from other ministries, I for one would appreciate that. I just make that suggestion to the chairman.

Mr. Chairman: We could also see what Mr. Nishi could come up with as researcher for the committee.

Mr. Kanter: Sure. I do not want to be exclusive here. The more information the better, as far as I am concerned.

Mr. Chairman: Mr. Allen, I am not sure whether you have completed your questions. I have Mr. Miller after that.



Mr. Allen: I wanted to come briefly to section 8, which deals with the question of offences and penalties. I guess the nub of my question is, why is an individual employee who contravenes the act by smoking in a nondesignated area of an enclosed workplace subject to precisely the same fine as the employer who is responsible for the whole administration, in effect, and the impact of this legislation in his workplace, and who might be the reason why numbers of people continue to smoke in the enclosed workplace when they would not properly do so under this act? Why is he subject to the same range of fine as the individual employee who contravenes?

It seems to me there is a disproportion there. The concerns that bear upon each of those two parties are really quite different. The individual who faces even a fine of up to \$1,000 for an individual offence might find that a pretty heavy penalty—this is an individual party bearing that fine—whereas the employer who has some other costs that he might avoid in terms of the arrangement of his workplace or the posting of signs and so on might have more incentive to break the act than the individual employee. Yet he is, again, subject to precisely the same range of fines.

Is there some rationale behind the provision of the same fine for the employee and the employer in this under the legislation?

Mr. Blair: Speaking as one of the ministry lawyers, and without getting into the issue of why the fine levels are set where they are, our experience with, say, the Occupational Health and Safety Act has been that, notwithstanding that we have a \$25,000 maximum fine, individuals who are charged under that act, whether they are charged as employees or supervisors, routinely are given fines which are much lower than the kinds of fines given to corporations. So even though the ranges are the same, the experience in provincial court will no doubt be that the court will treat a large, sophisticated employer differently than it will treat an individual who is charged under the act.

Mr. Allen: I find that a little bit puzzling. While I understand the practice and I appreciate that that is the case, it strikes me as odd that legislative counsel or the ministry might think that, therefore, it is still appropriate to indicate, by signalling equivalent ranges of fines in the legislation, that somehow the offence is roughly equivalent as far as both parties are concerned.

I remain somewhat puzzled, notwithstanding your answer, as to why there is not, in the light of the practice that you cite, some willingness to send different signals with respect to the really responsible party under this act, that is, the employer, as distinct from the employee who may inadvertently or deliberately infringe the act.

Mr. Clarke: I do not really have any particular comments that I can add, Mr. Allen. I think that you will appreciate that what this bill directs itself to is trying to contain people's addictive habits and where they practise them. If one were to stand back and think about it, there is more probability that employees are going to violate this act than that employers are.

I think that the bill as it is drafted is not going to be a particular problem of enforcement. I think it is a bill that, because of the way it is crafted in terms of being sufficiently flexible to allow workplace parties to work out a smoking policy, will be by and large self-administering and self-enforcing. I can appreciate that others would argue that for whatever

reasons an employer should be fined more, but this bill is trying to put in place a fine that, as a maximum, would give the courts some guidance as to the severity of the issue at hand.

Mr. Miller: Is lingering tobacco smoke in the workplace an indication of a serious ventilation problem? If I were smoking here today—I think I can feel that air moving—would that be a hazard to my fellow man as long as the ventilation system is working properly? Have you done a study on that?

Mr. Clarke: You will undoubtedly hear quite a bit about that in the course of the next two days. You will hear conflicting views on that matter, each of which will be based on studies that have been undertaken. It will always depend on how much there is.

Mr. Miller: Around 25 per cent of the workplace area and all government buildings have been established as nonsmoking areas. But it concerns me too to see somebody have to stand out on the sidewalk or out on the back porch or wherever to smoke. If there is proper ventilation in those buildings, if they set a particular area aside specifically for that, it seems to make sense that the public would be protected.

I guess the bottom line is that it is a legal substance that we are talking about here. You would almost think that we were trying to build a case that something is illegal. There is lots of stuff that goes on that is illegal and people get away with it, and we are trying to condemn it. But this is a legal practice, and I believe that all buildings, and very particularly public buildings, should be provided so that the public can smoke if they wish.

Mr. Chairman: Are you leading up to a question?

Mr. Miller: I just wondered if there was any consideration given to that provision within the legislation, so every individual has the right, without going out on the sidewalk, to smoke.

Mrs. Sullivan: Indeed, the thrust of the legislation is not that. Section 2 says: "No person shall smoke in an enclosed workplace"—unless. Indeed, the thrust of the legislation is quite the reverse. An employer would be allowed to designate an area of up to 25 per cent of the space in the workplace where people would be allowed to smoke.

Mr. Chairman: Mr. Sterling, would you like to continue with some of your questions?

Mr. Sterling: Mr. Allen basically asked the questions that I wanted to put forward. I would only make a comment with regard to a fine of \$2,000. An employer has to make a reasonable effort to ensure that these nonsmoking areas are in fact nonsmoking. I would say that a \$2,000 fine for an employer would not be much of a penalty when he might want to just ignore the whole situation after he had had his meeting and said, "This area is smoking and this area is nonsmoking."

When we went through the public hearings and the clause-by-clause on Bill 3 in its former form as Bill 70—it received second reading and went to public hearings—there was a recognition by committee members, including all parties, that they wanted to structure the level of fines differently for individuals versus the people who were in charge of the area. I believe that that has been recognized as well with regard to the federal legislation, where

there is a different threshold of fine. That is basically what I wanted to ask about.

Mr. Chairman: Mr. Sterling, you mentioned public hearings on Bill 3. Could you tell us when those hearings took place, in case members wish to refer to the Hansard on that?

Mr. Sterling: It was Bill 70 at that time. It was introduced in December 1985 and I believe the public hearings took place in September 1986. I think the clause-by-clause took place in December 1986 and it was returned to the House for third reading in January 1987. Then, of course, it died when we went to the election in September 1987. It was reintroduced in Bill 3, as it was amended by the committee in December 1986.

Mr. Chairman: So if members wish to make reference to the Hansard of that period, it could be a source for additional information.

Are there any further questions to Mrs. Sullivan or the two staff members here from the Ministry of Labour? If not, then that concludes our session for this afternoon.

I would remind members that we are scheduled to meet here at 10 o'clock tomorrow morning. We have a pretty full agenda for the next two days, so I would request that members co-operate by being on time. Do we have a general consensus that, if some members are late, in deference to the delegations we can start the hearings as close to 10 o'clock as possible?

Agreed to.

Mr. Chairman: I notice in the schedule that we are scheduled to meet in this room for all of our hearings. So if members wish to, they may leave their papers here; however, I am not trying to discourage you from taking home some of the briefs we have received in advance for evening reading in preparation for the hearings. There being no further questions, the meeting is adjourned.

The committee adjourned at 3:44 p.m.





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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

SMOKING IN THE WORKPLACE ACT

TUESDAY, APRIL 18, 1989

Morning Sitting



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Neumann, David E. (Brantford L)

VICE-CHAIRMAN: O'Neill, Yvonne (Ottawa-Rideau L)

Allen, Richard (Hamilton West NDP)

Beer, Charles (York North L)

Carrothers, Douglas A. (Oakville South L)

Cunningham, Dianne E. (London North PC)

Daigeler, Hans (Nepean L)

Jackson, Cameron (Burlington South PC)

Johnston, Richard F. (Scarborough West NDP)

Owen, Bruce (Simcoe Centre L)

Poole, Dianne (Eglinton L)

Substitutions:

Cleary, John C. (Cornwall L) for Mr. Owen

Kanter, Ron (St. Andrew-St. Patrick L) for Ms. Poole

Kozyra, Taras B. (Port Arthur L) for Mrs. O'Neill

Miller, Gordon I. (Norfolk L) for Mr. Beer

South, Larry (Frontenac-Addington L) for Mr. Carrothers

Sterling, Norman W. (Carleton PC) for Mr. Jackson

Clerk: Decker, Todd

Staff:

Nishi, Victor, Research Officer, Legislative Research Service

Witnesses:

From the Canadian Society of Club Managers:

Humes, Grant, Manager, Business Club Operations

From Smokers' Freedom Society:

Bédard, Michel, President

From the Ontario Public Health Association:

Elson, Peter R., Executive Director

Zentner, Shawn

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Tuesday, April 18, 1989

The committee met at 10:05 in room 151.

SMOKING IN THE WORKPLACE ACT  
(continued)

Mr. Chairman: This is a meeting of the standing committee on social development convened to consider Bill 194, An Act to Restrict Smoking in Workplaces. Today we have set aside the entire day for hearing deputations and we will begin shortly with that.

We have some changes to your agenda which I would like to bring to your attention. The 11:30 position today had initially been accepted by the Committee of Concerned Tobacco Area Municipalities, represented by Dan VanLondersele. Remember he was from one of the groups we were trying to fit in. He had accepted that position but has found it necessary to cancel.

He would like to be fit in tomorrow. However, tomorrow our schedule is very tight. The only way that we can see to fit him in would be to start at 1:30 instead of 2:00. I know there was some concern expressed about that yesterday. Perhaps you might think about it and at the end of the morning, we might consider it. I know it was Mr. Sterling who had expressed that concern about starting early tomorrow, so perhaps we should wait until he shows up and then make that decision at the end of the morning. I just wanted to bring that to your attention.

There is still some phoning going on for the 2 o'clock position. It may fill up between now and 2 o'clock, but we should know by the end of the morning.

We will begin then with the first delegation, the Canadian Society of Club Managers. Representing this organization is Grant Humes. The clerk tells me the brief should be in front of you.

Mr. Humes, welcome to the committee. You have one half-hour for your presentation. You may divide your time as you see fit between presentation and questions from committee members.

CANADIAN SOCIETY OF CLUB MANAGERS

Mr. Humes: Ours is a fairly short brief and we are solely dealing with the exemptions in section 2 of the bill. I think what I would like to do is just read the brief and people can read along as we go. It is quite brief.

The Canadian Society of Club Managers is a society of private club managers whose object is to promote and advance education and co-operation in club management, thereby assisting club officers and members to secure the utmost in efficiency and successful operation.

The Canadian Society of Club Managers, Ontario branch, welcomes this opportunity to submit to you our serious concern with the exemptions in subsection 2(2) of Bill 194. This subsection should provide an exemption from the smoking prohibition of the bill in the case of private clubs which serve

only their members and guests and not the public. Most private club facilities have high quality food and beverage operations and a large portion of the actual enclosed space of the club is made up of these front-of-the-house areas which cater to the requirements of the membership.

Clause 2(2)(b) of Bill 194 provides that the smoking prohibition does not apply "in an area used primarily for serving the public." Furthermore, it appears from the statement of Hon. Gregory Sorbara, Minister of Labour to the Legislature on Wednesday, November 30, 1988, that this clause is clearly intended to exempt facilities and operations that are similar in nature to private clubs, such as those contained in hotels, restaurants, etc. from the application of the bill.

Since most private club facilities are in many ways comparable to a restaurant in terms of the nature of the services and products provided, it seems only fair and reasonable that the exemptions contained in subsection 2(2) of the bill should be amended to provide an exemption in the case of those areas used primarily by the membership of private clubs. To achieve this end, we recommend that clause 2(2)(d) of the bill be amended so that it reads, "in a private dwelling or in an area used primarily by the membership in a private club."

We urge you to give favourable consideration to this amendment. In our opinion, it will provide fairness and equality in the treatment of operations that are similar in nature, while at the same time maintaining control over smoking in the primary workplace areas of a club operation.

Ours is a fairly brief submission. Really, as much as anything else I would like to open myself up to questions on the part of the committee.

1010

Mr. Kanter: First of all, I appreciate your brevity. Not all of the groups that make submissions before legislative committees are quite so brief. I have a question. The city of Toronto has had for some time a bylaw that applies to restaurants and restricts smoking areas to about 25 per cent of their total area. Does the Toronto bylaw that affects restaurants also apply to private clubs located within Toronto?

Mr. Humes: Actually, no it does not.

Mr. Kanter: Is it exempted by the kind of definitional suggestion you make?

Mr. Humes: I do not know the wording of that bill, but I believe it probably says "restaurants or areas that serve the public," so I suggest it does not. The point I would like to make, for those who are familiar with them, is that I think you would find in any private club operation—for instance, in my operation our nonsmoking space is very substantial compared to the smoking space in the area where food and beverages are served. We more than honour the bylaw.

Mr. Kanter: I would like to pursue that. You are suggesting that in the particular club you serve there is a designated area for smokers set aside?

Mr. Humes: Yes, in the seating area.

Mr. Kanter: If it is in effect in your club and perhaps in many



other private clubs, how would this law, if it continued to include private clubs, affect your kinds of operations in a deleterious manner?

Mr. Humes: Basically what it boils down to is that, as I see it, in a club operation you have the front of the house and the back of the house, if we want to call it that. The front of the house serves the membership and the back of the house is basically used by the staff. This law, I believe, if I recall the legislation correctly, says that no more than 20 or 25 per cent of the enclosed working space can be smoking area. Now, if you take into account all your office space, kitchen areas, storage areas and hallways and then take into account lobbies and washrooms, plus the restaurant areas, by the time you divide that total square footage by 25 per cent, I think what you may very well find under the terms of this legislation is that the actual number of smoking seats you can have in your restaurant areas where you serve the public will be very small.

I think, for instance, if I worked it out on the instance of my particular operation, it might be something like 10 per cent or 15 per cent of the total seats, because a fair amount of the operation is back-of-the-house space also. What I am suggesting here is that hotels and restaurants have been excluded from the areas where they serve the public. We are serving a private membership. In effect, this bill is going to very much limit the amount of space we can designate as smoking space where the members actually use the club facilities.

Mr. Kanter: I am just trying to understand. I understand that the employer or the operator can designate one or more areas and that the total space shall not exceed 25 per cent. Why could you not designate 25 per cent of your dining room, for example, as a non-smoking area? It seems to me that the law, as written, might do that. I do not know why you are suggesting—

Mr. Humes: Are are suggesting 25 per cent as a smoking area?

Mr. Kanter: It is the dining room area that you are concerned about. I take it to be your major concern?

Mr. Humes: Right.

Mr. Kanter: I believe this bill, as written, would enable you to designate 25 per cent of your dining room area, of your upfront area as a smoking area.

Mr. Humes: As I understand it, you look at the entire enclosed working space, which means the whole club, including all the backrooms, etc. When you take into account that entire enclosed space, if you happen to have a large portion of your square footage in the back of the house where you do not serve the members, let's say, in kitchen facilities, storage facilities, etc., ancillary areas, then by the time you divide that entire square footage by 25 per cent, you may find that in the area where you serve the members only a very small portion will be allowed as smoking space there. That is our interpretation of the bill.

Mr. Kanter: I do not know if there are any staff here who could explain the situation. I think we just have a question of interpretation of the law. I guess the question that I would like to put to this person, and perhaps we could put it on the record now and have it answered later, is, would it not be possible for a private club such as the one that Mr. Humes works at or represents to designate 25 per cent of the front of the house or

the dining area for smoking? Is that not entirely permitted under the law as written? Could I put that question on the record? If anyone is available to answer it now, that would be fine. Otherwise we may have to have that answered later.

Mr. Chairman: I do not know if there is anyone here from the ministry who could answer that question. Is there? I do not see anyone. We can, as you said, put the question on record and get that answered. Any other questions? Do members have questions? Okay. Thank you very much, Mr. Humes, for taking the time to come before us and drawing your proposed amendment to our attention.

Mr. Humes: Thank you, gentlemen.

Mr. Chairman: The committee will be giving it consideration later.

Mr. Humes: Thank you.

Mr. Chairman: Our next delegation is the Smokers' Freedom Society. This organization was not scheduled until 10:30. Are you ready to go now, Mr. Bédard? Your name is Michel Bédard, I take it? Welcome to the committee. You have one half hour to make your presentation. You may reserve some of that time for questions from the committee at your discretion.

Mr. Bédard: Thank you.

#### SMOKERS' FREEDOM SOCIETY

Mr. Bédard: Mr. Chairman, members of the committee, I would like, first of all, to thank you for giving the Smokers' Freedom Society this opportunity to make its views known on Bill 194, An Act to Restrict Smoking in Workplaces.

You are probably in receipt of the information kit which includes the text of the brief itself and various information. I will be talking to you later about these.

First of all, let me give you some basic explanations about what the Smokers' Freedom Society is. We are a nonprofit organization with a federal charter. We have more than 8,000 supporters all across Canada. More than 2,000 of them are living, and I suppose working, in Ontario.

The aim of the Smokers' Freedom Society is not to encourage people to smoke nor is it to discourage them from doing so. The only thing we want to achieve is to protect the freedom which is the freedom to smoke, but not any kind of freedom to smoke: what we call a responsible freedom to smoke. Among other things, this means smoking, of course, with respect for others.

I think that smokers are generally responsible persons, who take into account the fact that there are nonsmokers around them and who try to make sure that they do not annoy them. The problem is that now it seems that smokers are becoming treated as outcasts. None the less, they are paying taxes, very heavy taxes. In the last year, for example, Ontario smokers paid \$1.7 billion in taxes to the provincial and federal governments. As far as the Ontario provincial government is concerned, it received \$800 million in taxes paid on tobacco products by smokers.

The main question, I think, in this Bill 194 is that you have to take

into account the rights of smokers and the rights of nonsmokers and you have to find some balance between these rights.

Our basic position is that balancing these rights of both the smokers and the nonsmokers is best left up to the employers. The employers are the ones who know the desires of smokers and nonsmokers who are working for them. They are the ones who know the physical layout of the workplace. They are the ones who know what kind of ventilation system they have in their premises.

When the city of Toronto considered the possibility of a regulation respecting smoking, the Smokers' Freedom Society asked Canadian Facts to make a survey in Toronto. You have this survey in the kit that you were given. You have the methodology, you have the results and you have everything you need, I think.

#### 1020

One of the very interesting findings of this survey is the following: Without any bylaws, some employers had already imposed some restrictions on smoking in their own workplaces. In some cases it was a total ban, in some other cases there were various kinds of restrictions—you can smoke in that kind of place, you cannot smoke in a meeting room, you can smoke in a coffee room or something like that. The fact is that the owner of any private place has the right to set up the rules he or she wants on his or her premises as long as these rules are not illegal. So this, in our view, shows that obviously there is no need for any kind of government intervention in the private workplace.

If you have a closer look at the results of this survey, you will find that employers and employees, both smoking and nonsmoking, were then satisfied with the status quo. You will find also that because of that, the majority of employees and employers did not at all want city hall to intervene in their workplace; they wanted the question to be left to the individual place. They wanted to decide whether or not there should be a ban, a regulation or nothing at all on smoking. The Smokers' Freedom Society, therefore, submits that the province should leave it up to the employee and employer to decide on smoking in the workplace.

I suppose that the underlying basis for Bill 194 is possibly the concern about the so-called dangers of environmental tobacco smoke to the health of nonsmokers. I have already stated that if there is any proof that, for example, ambient tobacco smoke gives lung cancer to a nonsmoker, obviously then the government would not only have the right to do something, but in my view would have the duty to do something. If that were the case, I would be the first never to smoke, unless of course I am allowed by the people around me to do so. The basic principle here is that no one has the right to kill anyone.

But is environmental tobacco smoke a health hazard to the nonsmokers exposed to it? This is the basic issue, then. To have an idea about that, we at the Smokers' Freedom Society asked the International Technology Corp. to do a survey in 31 office buildings in Ottawa. The International Technology Corp. carefully chose buildings where there were no kinds of regulations at all—absolutely nothing. So from a particular point of view, these were among what some people would call the worst buildings. You have the results of this study in the kit that you received. It was published in Environmental Technology Letters.



When I saw the results of this study, I wanted to make sure that they were reliable results. Personally, I am not a scientist, chemist or a medical doctor. I understood what I read and I understood the methodology. But since I had no experience in that field, I had to make sure that these were really sound scientific results. That is why I asked that this study be published in a very well known international scientific journal. This was done in Environmental Technology Letters, along with studies from the World Health Organization and many universities. As far as I can see, I suppose that these results are reliable.

In short, the main finding is that for a nonsmoker to be exposed to the equivalent of only one cigarette in the average Ottawa workplace, it would take at least 170 hours, more than four full work weeks in a building where there is absolutely no regulation with regard to smoking. It seems to me, and this is the official position of the Smokers' Freedom Society, that there is no health justification for restricting smoking in the workplace on the basis of this evidence.

The same results, or roughly the same results, were found in studies conducted in New York, Dallas and various places all over the world. That is what makes us feel that Bill 194 does not strike a reasonable balance between the rights of smokers and nonsmokers.

I must emphasize here that nonsmokers have rights and their rights should be respected, but smokers also have rights and their rights should also be respected. It is one thing to make sure that the nonsmoker is not annoyed by environmental tobacco smoke and it is another thing to oblige people not to smoke, which is perfectly legal behaviour.

Of course, you will say that there is an article, a clause in this bill allowing for 25 per cent of the workplace to be designated as a smoking area. It seems that this 25 per cent rule is arbitrary. Why 25 per cent? You have places where less than 25 per cent of the workers do smoke; maybe no one smokes. You have places where 30, 35 or 50 per cent of the workers are smokers and maybe no one is annoyed by smoking.

Moreover, under this bill the employer has the right, not the duty, to designate no more than 25 per cent of the workplace as a smoking area and possibly less: it could be 25 per cent or 15 per cent, 10 per cent or even nothing. But there is no corresponding ability to designate more than 25 per cent of the workplace as a smoking area, even if all the nonsmoking employees consent. We feel this is not fair.

Bill 194 does not allow for numerous factors: the layout of a particular workplace, the ventilation system available and windows that may open. All the workplaces are not located within a sealed building. This is one more reason why we do feel that the employer is the one who should decide whether or not there should be any kind of regulation and, should that be necessary, what kind of regulation should be adopted.

If we are looking at the bill in the more legal fashion, the Smokers' Freedom Society anticipates several problems with the bill as currently drafted. Let's take the definition of "enclosed workplace" and let's think about a large Toronto building. In such a building you have a lot of tenants. Some have one floor, some have part of a floor, some have two or three floors. The question arises, in whose workplace is an employee working?



For example, is he working in the owner's workplace, since I suppose there are lots of owners of buildings that have some workplace of their own on the premises? Is he working in the building manager's workplace? Is he working in the tenant's workplace? Who will decide what the 25 per cent areas are? As for the common areas, such as lobbies, to whose workplace do they belong?

Of course, it would be possible to say these are hypothetical questions without any kind of interest. If you look very closely at Bill 194, you will see that under section 3 of the bill an employer has no obligation but only a right to designate a smoking area, so there is a real possibility that the employer, unable to interpret the legislation, will simply ban smoking altogether. Because of the very substantial penalties provided in the bill, such an employer could simply prefer to discriminate against smokers.

I would like to remind you that a few weeks ago, and again a few days ago, the chief commissioner of the Canadian Human Rights Commission, Max Yalden, said that he thought that smokers were slowly becoming a minority that was being discriminated against. I suppose you do not want to get involved in any kind of discrimination.

In summary, the society submits that government intervention in the workplace such as is contemplated by Bill 194 is not warranted. This kind of decision should be left to the individual workplace. We do believe that there are workplaces where smoking will be banned, workplaces where smoking will be allowed and workplaces where there will be, to some extent, a designated smoking area: 10 per cent, 15 per cent, 25 per cent or more.

I would like to finish by quoting a few short lines of an eminent scientist, who was also a member of the Order of Canada, Fernand Séguin, and I think that this is self-explanatory:

"Is it still possible to talk about smoking and use scientific language, or, at least, language which contains a minimum of critical spirit? It seems that the mood of the times favours nothing but invective and offers the right to speak only to sectarians and fanatics on both sides of the fence. Anyone who tries to decide between exaggerated statements finds himself in the position of the friend of the family who tries to intervene in a conjugal quarrel and who is soon treated as an enemy by both parties, provisionally united against the intruder.

"In the case of smoking, it is scientific research and the knowledge resulting from it which are looked upon as spoilsports, since there is a relentless effort under way to make them assert what they cannot prove without betraying their mission....

"And now, in the expectation of legislation restricting smokers' rights, if such exist, and which would protect the rights of nonsmokers, if such exist, there is an endeavour to deafen us with the dangers of lung cancer, no less, of which nonsmokers are the supposed victims—'passive smokers' as they are called. These dangers emerge from an epidemiological study which is a model of poor scientific research, in which the risks to smokers are compared with those to nonsmokers, taking for granted that the cancers of the latter are due to the cigarette smoke of smokers to the exclusion of any other element. That is how sentence is being passed, with passion overcoming the respectful examination of the facts.

"On reflection, behind this antismoking campaign, which is increasingly taking the form of intolerance, we may wonder whether it is not the pleasure

of others which is the target. Puritan societies, such as that which we are becoming after a few years of moral laxity, tolerate poorly that people take pleasure in contentment."

I thank you very much for your attention.

Mr. Chairman: Thank you very much. We have some questions.

Mr. Kozyra: Mr. Bédard, you spoke eloquently in playing down the dangers to the nonsmokers of the indirect or environmental hazards, which you did not refer to as really hazards. I am just wondering if you feel that the direct risks to smokers are exaggerated too, namely, the preponderance of evidence in regard to lung cancer. I want to put a case and hear your rationale in defending the position.

You spoke of smokers' rights and fairness and the inequity of what is proposed. Let's assume that the evidence gathered against direct smoking as it relates to lung cancer is relatively accurate. Then I extend the inequity here in a situation of, say, a smoker who willingly smokes, willingly assumes the risk, leaving the nonsmokers aside for the time being, but in so doing, somewhere down the line, and certainly I do not wish to impose this on anyone or hope it on anyone, develops lung cancer and is hospitalized and goes through all those treatments and so on.

You spoke of the inordinate amount of tax that is being paid. That tax roughly works out to something like—let's assume it is \$1 per pack of cigarettes and the person smokes one package a day, so it is \$1 a day, \$365 a year. If that person is hospitalized, that \$365 a year that he has paid in cigarette tax amounts to less than one day's hospital costs.

I am wondering, in the inequities or the fairness and the rights, what rationale you would develop here. That person willingly imposed not only upon himself a kind of medical sentence but indirectly, or quite directly, upon the rest of society and taxpayers this bill.

Let's say he is hospitalized for a year, and often it could be a lot longer than that. If he smoked for 30 years, it would cover fewer than 30 days of his stay, so to me there is an economic inequity as well. The bill does not address all of that, I realize. You played down the indirect dangers, but there are those other things involved.

Mr. Bédard: If you would allow me to make some considerations, I thank you for these remarks. They are very interesting. But I would like to point out a few things here.

First of all, a study by Stoddart and Labelle was commissioned by the government of Ontario. The result of this study is that Canadian smokers, as far as health care costs are concerned, do pay their way. This is the result of the study of the Ontario government.

1040

As far as the health risks for smokers themselves, and the nonsmokers, are concerned, I must say this. I have never understated the risks related to smoking for the smokers themselves. I am a smoker and I know I am running a risk, but we have to measure the risk as accurately as possible. It is true, for example, that there are more smokers getting lung cancer than nonsmokers, but it is also true that 90 per cent of smokers never get lung cancer.

I have here a study published in the British Journal of Cancer. I am not a medical doctor, but I suppose that these are reliable studies. It seems that this journal is one of the leading ones in the world, and it precisely studies the relationship of passive smoking to risk of lung cancer and other smoking-associated diseases. It says this:

"Amongst lifelong nonsmokers, passive smoking was not associated with any significant increase in risk of lung cancer, chronic bronchitis, ischaemic heart disease or stroke in any analysis."

You will find this in the kit you have been given.

There are risks related to smoking for the smokers themselves. According to this Ontario study, it seems that Canadian smokers do pay their way as far as health care costs are concerned. For the nonsmokers I suppose that it could be annoying, it could be unpleasant. That is why we want the smokers to smoke in a very courteous fashion. That is why we understand why there could be some sort of regulation.

But we simply say that smokers as well as nonsmokers have rights, since what they are doing is perfectly legal. Think about this: It is perfectly legal.

Mrs. Cunningham: In preparing myself, as a committee member, for these hearings and trying to be particularly objective—even though I have a bias and that is towards good health, as I am sure you do—I have looked at the briefs and I have looked at a number of the backup documents.

One that was quoted by a number of persons, no matter which side they appeared to be on, related back to the hearings of the Ontario task force in 1982. The publication is called Smoking and Health in Ontario: A Need for Balance. There was a lot of work that went into that.

I think one of the recommendations was particularly important and I think that is what the government is trying to respond to, because all of us know that these hearings are expensive and that people give a lot of their personal lives to assist the government in making rules. One of them had to do with the recommendation "that the government specifically provide nonsmoking employees the right by law to apply for and receive, without prejudice, relief from exposure to secondhand smoke in their usual workplace."

Most of the information that you have given us with regard to the softness of the research was also part of this report. People recognized it, but the bottom line was that it would be better not to have to be in a room where there is smoke. It was that simple. Everybody recognized that and everybody agreed, but I thought the most important part was that the smokers and nonsmokers alike during these hearings "were in favour of restrictive measures."

I am wondering what your point is, given all of the information. Are you saying that we do not need any legislation, given the history since the hearings in 1982, some seven or eight years ago? Have we made such great gains in the workplace that we do not need any legislation? I would like you to respond to that observation, given what I have said.

Mr. Bédard: If you are looking at the facts before any kind of public regulations, laws or bylaws, were adopted, a lot of workplaces had set up various kinds of smoking policies. I could name a few companies. I do not



want to make any ad here for any company, but a lot of workplaces, mainly in Ontario, as a matter of fact, had set up their own smoking policy, totally banning smoking in a few cases, restricting smoking in particular areas in other cases and so on. This is the first thing. Before any kind of legislation, they were doing such an exercise.

As far as this bill is concerned, I understand your question, but my point is that the 25 per cent rule may not be perfectly fair. This bill gives the employer the right, not the duty, to designate a smoking area. It says that if the employer wants to use this right, he must provide no more than 25 per cent of the areas as smoking areas. Possibly then it could be zero per cent, five per cent, 10 per cent; there is no problem with that.

But if you have an employer who is able because of the kind of workplace, because of the number of smokers, because nonsmokers really consent to this practice, if for any kind of reason the best decision would be, let's say, to have one third of the workplace designated as a working area, then it is prohibited under this bill. Possibly because of that, there are employees who would be discriminated against because it will happen that their office is not in the 25 per cent area. They will not be able to smoke in their own office, even if it is a closed office, even if it has a window that opens outside.

If employers and employees want restrictions anyway, as you pointed out, even if there is no regulation coming from the government, they will have some sort of regulation. They have already done this.

My concern here is that I think to set up a rule saying specifically it should be no more than 25 per cent is not the ideal. I do not feel it is possible to have a single rule applying to thousands of workplaces all across the province. This is the concern.

Mrs. Cunningham: I asked the question yesterday what the rationale was behind the 25 per cent and it was agreed there was none. I am just wondering, are you then saying you do not want a number there at all, just an open-ended smoking area? Is that what you are saying?

Mr. Bédard: If you feel that for any reason there should be a number, then you will have to put a number. But then, since it is possible to have less than the stated percentage designated as a smoking area, I would put the percentage higher. Let's say, for example, that you say up to 50 per cent of the workplace could be designated as a smoking area. It does not prohibit the employer from designating only 10 per cent of the workplace as a designated smoking area, but if you have 25 per cent, this does prohibit an employer from designating a third of the workplace as a working area. This is the problem. If you feel you absolutely need to decide in this bill on a specific percentage, I would say put it higher.

Mrs. Cunningham: You are saying put it up.

Mr. Bédard: Yes.

Mrs. Cunningham: What is your feeling about just saying, "Go outside"? I am concerned about the cost to the public as well, and I am sure employers are. People are telling us, and we have all been reading the stuff, that it will not make any difference because you are not putting up the right



kind of walls and you do not have the right kind of circulation system. Why not just say, "Go outside"?

Mr. Bédard: I can tell you what happened with that kind of decision in Alberta, in some schools in Calgary and Edmonton, for example. That is what they decided. Then they found out that the kids over there suddenly saw that some of their teachers were smokers. They had never seen this before.

Mrs. Cunningham: We do that in Ontario. That is what students do here. They have smoking patios and they smoke with their teachers.

Mr. Bédard: No, no. I am talking about students who did not know this particular teacher was a smoker since he never smoked while he was with his students. He smoked in his office, for example. Because of this regulation, he was obliged to smoke outside and then they found that he was a smoker.

1050

Mrs. Cunningham: Is that good or bad?

Mr. Bédard: What I am telling you is that on the one hand it seems we have a lot of regulations that are meant to prevent promotion of tobacco, and on the other hand, we are adopting regulations that have as a result some sort of promotion of tobacco, even if this is not the aim that is looked for.

Mr. Sterling: Mr. Bédard, several times during your brief you used the pronoun "we." I was wondering if you could enlighten us about the group you represent. How is your association financed?

Mr. Bédard: This was made public at the very first press conference we held in Montreal and then in Toronto and then in Vancouver. We do receive some money from the tobacco manufacturers, tobacco growers, tobacco workers' unions, tobacco wholesalers and from more than 8,000 supporters; in some particular instances, for example, when the city of Toronto was contemplating the possibility of the bylaw regulating smoking, there were some particular groups that really did not want this kind of intervention in the private workplace and then gave us some money.

Mr. Sterling: Is most of your funding coming from the tobacco industry?

Mr. Bédard: A large part of our funding is coming from the tobacco industry, yes.

Mr. Sterling: Does your association hold any meetings to elect directors? Are you elected? Who are you accountable to?

Mr. Bédard: I am not elected; well, I am elected by the board.

Mr. Sterling: How do you get to be on the board? Who elects the board?

Mr. Bédard: The board has been there since the beginning. It is always the same.

Mr. Sterling: So there is no election of the directors of the board?

Mr. Bédard: No, the people who come to the society are supporters, exactly like me when I go to the Red Cross. I have with me my card that says Michel Bédard is a supporter of the Canadian Red Cross Society. I have no right to vote, but I can say: "I'll no longer give you any money. I'll no longer support you." Then it would be a problem for the Red Cross and it would be the very same thing with us.

You have the same situation with Greenpeace. Greenpeace has supporters and we have supporters, and the supporters have a very strong voice. If they no longer renew their support, then we are speaking on behalf of no one. This would be a very important problem.

Mr. Sterling: On your board of directors, is the tobacco industry represented there?

Mr. Bédard: Absolutely not. No member of the tobacco industry is on the board of the Smokers' Freedom Society.

Mr. Sterling: Is that a published list, the list of directors?

Mr. Bédard: When we provide the information requested by the federal government, I suppose it is public. I suppose it is easy to have access to this under the Access to Information Act; I suppose, at least.

Mr. Sterling: There are no elections, though, as such, to elect you or elect the directors?

Mr. Bédard: No. It is exactly like you have with Greenpeace and the Red Cross.

Mr. Sterling: The Red Cross is hardly a good comparison. On the health aspect of this issue, Health and Welfare Canada produces statistics each year. It claims there are 35,000 people whose deaths are attributable to tobacco smoking. That is 35 to 40 people a day in Ontario, if you break down proportionally those statistics. Do you believe that is correct?

Mr. Bédard: It does not seem that it is a clear-cut issue, believe me. For example, Dr. Don Whiteside, who is the head of the Civil Liberties Association, National Capital Region, in Ottawa, was giving a press conference a few days ago with me in Ottawa, and it does not seem that these are clear-cut deaths. I am not a statistician but the question is, how is it possible to find out so precise a number when you are talking about that kind of problem? This is the basic problem.

As far as Health and Welfare Canada is concerned, I suppose it wants to promote its point of view, which is a good idea, I would think, but we have to be extremely careful. Even if you are looking at the United States Surgeon General, he is saying a few things that even the antitobacco leaders disagree with. For example, Dr. Albert Hirsch, who was one of the leaders of the antitobacco campaign in Europe, stated a few times that unfortunately Dr. Koop really went too far.

Mr. Chairman: Mr. Sterling, Mr. Bédard is well over his half-hour. I have allowed it to go on beyond the half-hour because I was very interested in the answers to the questions you were asking. Our next delegation is not on until 11 a.m. I assume the committee has no objection to continuing questions

until 11. Is there anyone else who would like to ask a question? I would like to fit you in, if possible. No? Okay; then carry on, Mr. Sterling.

Mr. Sterling: You do not agree with the Surgeon General who in 1986 in his report made three major conclusions:

"1. Involuntary smoking is a cause of disease, including lung cancer, in healthy nonsmokers.

"2. The children of parents who smoke compared with the children of nonsmoking parents have an increased frequency of respiratory infections, increased respiratory symptoms, and slightly smaller rates of increase in lung function as the lung matures.

"3. The simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate the exposure of nonsmokers to environmental tobacco smoke."

Dr. Koop, as I understand it, has the state-of-the-art research behind his report. Do you not agree with these conclusions?

Mr. Bédard: I will tell you this: The US Surgeon General stated that secondhand smoke was responsible for 2,000 deaths in the United States. That is what he stated. According to Barbara Amiel, who does not like tobacco—you have this press cutting in your kit. According to Barbara Amiel, who really wants smokers to quit smoking, he did acknowledge, when he was challenged by some scientists, that he "may have pulled the figure out of a hat." Barbara Amiel says that secondhand smoke may be discomforting, but falsifying facts, as Dr. Koop admitted doing, and subverting science to politics are infinitely more dangerous. What can I say?

Mr. Sterling: Do you believe the statement, "Involuntary smoking is a cause of disease, including lung cancer, in healthy nonsmokers"?

Dr. Bédard: I do not. If I did, I would not smoke at home where my wife and my children live with me.

Mr. Sterling: So you differ with the Surgeon General on that.

Dr. Bédard: What I do believe is that smokers have to be respectful towards nonsmokers.

Mr. Sterling: In your answer to another question, you mentioned a study of the Ontario Ministry of Labour. I believe you were referring to the House report in 1985. Is that the one?

Dr. Bédard: No, it is a study by Stoddart and Labelle.

Mr. Sterling: When was it done?

Dr. Bédard: Two or three years ago. I could make sure you receive a copy of the full study, if you so wish.

Mr. Sterling: There was a fairly extensive study done by Dr. House for the Ministry of Labour, which was published in June 1985. I will read from the conclusions on page 70:

"There is little doubt about the irritating and annoying effects of



secondhand smoke. Also, the evidence appears quite convincing for the exacerbation of the symptoms of some diseases, especially allergic rhinitis, asthma, and angina due to passive smoking." Further, he goes on and says, "For these reasons, although it is difficult to quantify the health hazard on an individual basis, it is recommended that long-term exposure to secondhand smoke in the workplace should be minimized or avoided."

Do you agree with that study?

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Mr. Bédard: I have never seen this one, but I appreciate seeing this.

Mr. Sterling: Yes. I do not know whether the members of the committee have that particular study or not. I guess the question in terms of the Legislature comes down to this: I believe we should be as tolerant of other people's habits as possible. I guess I disagree with your analysis of the medical evidence in that I believe that if somebody smokes in my presence, he is in effect assaulting my body or assaulting the bodies of the other people in the room.

Given my understanding of health medicine—and I believe the Surgeon General; I accept his evidence—when push comes to shove, when there is a dispute, who should have the ultimate right? Should the nonsmoker have the right to a smoke-free environment or should the smoker have the right to foul that environment, as I would see it?

Mr. Bédard: I think, since we are talking about the workplace, the right should be left to a neutral person. For example, if you have two employees, one who is a nonsmoker and one who is a smoker, and for any kind of reason they cannot work out a reasonable accommodation between themselves, then I suppose the employer, who is highly interested in having no problems, would probably be the best-placed person to see whether or not it is maybe the smoker who is absolutely doing silly things or maybe the nonsmoker who is absolutely exaggerating what he is supposed to be exposed to.

Then the employer, I suppose, will be able to say, "Well, this is it," because he is neutral. My fear would be that if you ask the two persons involved, they would mainly try to make their case instead of honestly trying to find what could be a real, reasonable accommodation.

Mr. Sterling: I agree consultation is necessary to reach the best possible decisions, but in some situations people are extremely allergic to secondhand smoke. Given the situation where an employer may make a decision in favour of a smoker over a nonsmoker and the nonsmoker suffers ill effects, do you not believe the nonsmoker should be able to demand a clean environment in order to work?

Mr. Bédard: Assuming what you are now explaining, I suppose this nonsmoker will be able to have some medical explanation or something like that, and then of course it will be necessary to take the situation into account.

Mr. Sterling: So you would amend this bill to give the nonsmoker a greater right than he has —

Mr. Bédard: No, I will never do this, because I always feel it is dangerous to give to particular groups of people, whether they are smokers or



nonsmokers, any kind of group, a power over another group. This is terribly dangerous because of the fanaticism that could possibly come out of this.

I think we should be careful to choose a person who is as neutral as is humanly possible under the circumstances. In Quebec, a few days ago, a nonsmoker lost his case, and I suppose there will be smokers losing their cases. It depends on so many things. If, for example, you have a nonsmoker who is really upset by ambient tobacco smoke—maybe he is allergic; I do not know—and has real good reasons, even then maybe it is possible for the employer to say: "Well, I understand your situation. It is possible for you to have this office there," and there is no more problem.

Maybe this is possible. But if you gave a person, a smoker or a nonsmoker, his right to oblige the others to do what this person wants, then this person could possible say: "I do not want this office. What I want is this gentleman or this woman no longer to smoke. This is what I want." And this is personally what I think is not a good thing.

Mr. Chairman: Mr. Bédard, your extended time has expired. Thank you very much for coming before us and presenting your perspective on the issue. Mr. Sterling's questions have elicited some interesting responses. We thank you very much.

Our next presentation is from the Ontario Public Health Association. Representing this organization, we have Peter Elson, executive director, and Shawn Zentner.

Mr. Elson, you have a half an hour to make your presentation. You may leave some time for questions, if you wish, within that half-hour.

Mr. Elson: I will.

Mr. Chairman: Welcome to the committee.

#### ONTARIO PUBLIC HEALTH ASSOCIATION

Mr. Elson: Thank you. It is a pleasure to be here. We appreciate the opportunity to be heard at this committee hearing today to provide input into Bill 194.

The Ontario Public Health Association is a 3,000-member organization of community and public health professionals. Our principal goal is to provide leadership in public and community health in order to maximize the health of all Ontarians through the development of effective public health, health promotion and disease prevention strategies.

We agree in principle to the tenets of this legislation and commend the government of Ontario for recognizing the need for legislation specifically addressing the need to restrict smoking in the workplace. Such an act, if passed with appropriate amendments, will go far in making workplaces throughout Ontario healthier and safer for all concerned.

For while smoking itself is a recognized health hazard, it is equally recognized for the effect of secondhand smoke on nonsmokers or individuals who could be identified as passive smokers.

The Ontario Public Health Association has had a long history of involvement in tobacco-related policies and issues as attested to by the

resolutions passed by our membership and appended to this submission. We also support the positions of other groups such as the Non-Smokers' Rights Association, the Canadian Cancer Society and the Physicians For A Smoke-Free Canada who either have or will appear before you to advocate for changes to this legislation in order to make it effective and enforceable.

There is no safe level of exposure to tobacco smoke. The Department of National Health and Welfare staff, federal government of Canada, have reviewed the literature on the health effects of secondhand smoke and the composition of secondhand smoke and have attempted to establish the threshold limit values (air quality standards) for tobacco smoke levels of exposure. They concluded that there is no known accepted standards for tobacco smoke per se, that is, the complex mixture of gases and particles which comprise tobacco smoke. They conclude further that for several of the components in tobacco smoke, the recommended exposure limit is either zero or not assigned, suggesting that there may not be a safe level for involuntary exposure to tobacco smoke. Given these conclusions, only zero level exposure should be acceptable.

Therefore, our recommendation for amendments to Bill 194 will focus on the definitions, exceptions, signs required, penalties and enforcement.

Mr. Zentner: I will address the specific recommendations.

Section 1: With respect to the definitions in section 1, our first area of concern respects the designation of one or more areas as smoking areas as per subsection 3(1) of the proposed bill. Smoking areas or designated smoking areas are not defined in section 1. As such, these areas do not have to be (a) independently ventilated, (b) enclosed or even (c) contiguous. Further to this, such an area may include areas normally occupied by nonsmoking employees.

Conceivably then, the floor area that constitutes the smoking area might simply be the floor area surrounding the desks, often called workstations, of the employees who currently smoke, provided that the area does not add up to more than 25 per cent of the total floor area. Such a scenario is obviously unacceptable if the intent of this legislation is to protect the workers of Ontario from the hazards of environmental tobacco smoke.

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A suitable definition for a smoking area might read as follows: "An independently ventilated, separate and enclosed area set aside for use by smokers, which is clearly identified as such, and does not include an area normally occupied by nonsmokers."

Although the costs incurred by the employer to independently ventilate the smoking area may be substantial, the Ontario Public Health Association believes such costs are as necessary as any other expenditures incurred by the employer to ensure the workers' health and safety and should be considered an integral part of the cost of enacting the proposed legislation. Further to this, reduced cleaning, painting and maintenance costs may in the long term negate the initial cost of the independent ventilation.

Clause 2(2)(b): The exemption of areas used primarily for serving the public leaves out a substantial number of workers in the province, workers who work in an environment where exposure to environmental tobacco smoke can be high. I am thinking here maybe of a restaurant, a bingo hall, or something of that nature.

The Ontario Public Health Association feels that those workers in Ontario who work in areas used primarily for serving the public deserve the same protection from the hazards of environmental tobacco smoke that is afforded other workers in the province.

Therefore, we recommend that areas used primarily for serving the public not be exempt from the provisions of subsection 2(1). This recommendation would not apply so as to prohibit smoking completely in these areas, as smoking areas, provided they met the requirements of the proposed definitions, could still be provided.

Section 4: Respecting signs, this bill, assuming it is amended to include areas used primarily for serving the public, could provide for standardized sign requirements throughout the province where now there is some confusion. Currently, municipal bylaws that prohibit smoking in areas used primarily for serving the public often require "no smoking" signs to be posted. These signs, however, vary with the municipality, as does the maximum fine which is normally included in the text of the sign.

Since "no smoking" signs are seen as an important deterrent in achieving compliance with legislation aimed at restricting smoking, we believe it is important to prescribe the use of signs and that such signs be placed in the workplace. The Ontario Public Health Association thus recommends that, first and foremost, signs be prescribed; second, that signs as prescribed in the bill should be posted and kept continuously displayed in a prominent place in all areas of the workplace where smoking is prohibited; third, that these signs be consistent throughout the province and developed in collaboration with recognized public health authorities.

Subsection 8(2): In regard to the penalty under the employer's responsibility, we feel the penalty for an offence by an employer under this bill, in keeping with the known fact that exposure to environmental tobacco smoke is a significant occupational health hazard, is too low. Therefore, it is our recommendation that the maximum penalty be increased to \$25,000, to be consistent with the penalties found in subsection 37(1) of the Ontario Occupational Health and Safety Act.

Just a couple of general recommendations: Because this bill is concerned with the health and safety of employees and the employer's responsibility to ensure worker health and safety respecting smoking in the workplace, the Ontario Public Health Association recommends that this bill be amended to be consistent with the provincial occupational health and safety legislation.

Respecting enforcement: The Minister of Labour (Mr. Sorbara), in a statement dated November 30, 1988, commented that this bill would cover approximately 3.9 million workers at 233,000 workplaces in the province. The Ontario Public Health Association recommends that personnel be hired to carry out the enforcement of this bill. To give you an indication of the implication of such a recommendation, the city of Toronto hired four temporary public health inspectors to enforce its smoking-in-the-workplace bylaw, which covered approximately 50,000 workplaces. In keeping with that ratio, we would expect that between 18 and 20 persons would need to be hired to enforce this bill.

Consideration should be given to the current published statutory authority given to public health units under the Health Protection and Promotion Act and their current designated role in protecting the health of the public.



Mr. Elson: In conclusion, we would like to reiterate our support for the intent of Bill 194 to restrict smoking in the workplace, but we are emphatic that any smoking which does take place should pose no threat whatsoever to nonsmokers.

Our proposed amendments will serve to do just that. Without these amendments, we feel the act is flawed and will not provide the protection workers deserve. We would be remiss if we did not draw your attention to the need, in enacting this legislation, for (a) co-ordination and collaboration with other ministries, such as the Ministry of Health and (b) the need for a comprehensive communication/education campaign which takes into consideration the significant discrepancies in literacy levels and cultural values in workplaces throughout Ontario.

Thank you for your attention, and if there are any questions we would be glad to answer them.

Mr. Chairman: Thank you. You have left 17 minutes or so for questions. Who would like to start off?

Mr. Allen: Perhaps the most obvious question to ask you, first of all, is one that arises directly out of the previous presentation, and that is why, in your view, it would be inadequate for this simply to be left in the hands of individual employers who were acting with the best interests of their employees at heart and doing the thing that seemed appropriate and caused the least amount of trouble in their workplaces.

Mr. Zentner: Speaking to that, I would suggest that if the employer is acting in good faith and wants to cause the least problems for his employees, that is important. They want to have good employer-employee relations. However, if the particular employer did not feel that the employees' request for designating a smoking area and confining it to an enclosed area was appropriate in that that person was one or represented a minority, smoking would therefore continue, based on the employer's attempts to have smooth relations among the employees.

If that happened, then smoking would be permitted, and smoke, as long as it is permitted, would more than likely be recirculated into the general work area and into the offices of the building. As such, environmental tobacco smoke would still be in the environment, mind you, at a diluted proportion. The air would be taken out and diluted at a maximum of 10 or 15 per cent, as per standard air exchange rates. However, this would still be unacceptable in that environmental tobacco smoke would still be in the area and it is, we believe, and a number of studies show, a serious concern and health hazard.

Mr. Elson: To complement that response, I guess we would say that we do not necessarily share the previous speaker's faith in employers to always act in the best interests of their employees.

Mr. Allen: I think one would have to raise a lot of questions about a lot of legislation that presently exists that presupposes that there is need for some external intervention in workplaces. The whole regime around health and safety, workers' compensation and so on is obviously a matter in question.

Mr. Sterling: On that point, I might add that having had an involvement, as Mr. Allen has had, with this issue and having talked to many employers, it is not necessarily the intention of the employer which is



misplaced; it is dealing with a uniform system across the province that often is a problem.

If you have a very good employee who happens to be a smoker—and I am talking in the scientific field, in particular. When I was talking to this fairly large employer, his problem in terms of dealing with this issue, and he said that this was the largest management issue that he had to deal with, was the problem that if he enforced very strict rules with regard to protecting nonsmokers, then he might lose four or five very good scientific engineering types to another employer who had less restrictions.

The whole thing becomes not only a matter of intent in terms of the employer trying to do the best for his employee, but he has got to compete in the marketplace as well, which is another thing that we have not talked about.

The other thing that I think should be mentioned is that I think 95 per cent or 96 per cent of employers and the smokers are co-operative.

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Mr. Chairman: Mr. Sterling.

Mr. Sterling: I am sorry.

Mr. Chairman: I had recognized Mr. Allen. I thought you were perhaps getting a supplementary in, but you are taking up some of the delegation's time.

Mr. Sterling: I guess I get carried away. I am sorry.

Mr. Chairman: Mr. Allen, would you conclude your questioning? Then I will go to Mr. Sterling.

Mr. Allen: Yes. I presume it would also follow from your answer that the likelihood of an employer acting neutrally with respect to this question would be less the case with the kind of amendments that you are proposing to the legislation, which would of course entail specific costs for the employer, with regard to ventilation systems that could in some cases be somewhat elaborate or at least costly to an extent that would not prevail under the present legislation as proposed. Therefore, leaving it to the employer under those circumstances would be even less likely to produce a desired result. Would that be true?

Mr. Elson: It is our contention that the proposed legislation as written would in many cases require no change whatsoever to the existing workplaces where in fact there are smokers and nonsmokers, as I said, with no designated smoking area which is either separately ventilated or segregated from the other employees in the broad definition of 25 per cent of the workspace. In fact, the bill does not move the environment forward in that sense, from a health and safety point of view. Many of them can indicate that they are meeting these regulations without any change whatsoever.

I think a good analogy, and an appropriate one, would be the strides that have taken place in the whole area of wheelchair access for physically disabled individuals throughout the province, the fact that there are programs in place to provide it in new buildings, modifications to buildings and renovations that are taking place, and that the wheelchair access and the

equality of access, from a physical point of view, are in place. It does not necessarily have to be instantaneous.

As Mr. Sterling indicated, I think there is a strong case for uniformity, because if competitors within the same sector are in a position where they can interpret it one way and the other people are not, then in a sense that becomes a difficulty, the same as the analogy with equal access physically, since we are looking at equal access as far as healthy air within the workplace is concerned.

Mr. Chairman: Mr. Sterling.

Mr. Sterling: I will keep mine brief. I think there was another member who wanted to speak.

Mr. Chairman: We have one other questioner.

Mr. Sterling: First of all, I want to thank you for your brief being specific to certain sections of the act. One of my concerns, as you may have heard already, relates to the right of a nonsmoker normally to work in a nonsmoking area. I guess your definition in terms of the ventilated, separated area takes care of that problem.

The ultimate question that we have to come to is Bill 194, I believe, is an expression of intention by the government to grapple with this problem. It is not an easy problem. The problem I have with accepting Bill 194 now, as it is drafted without amendment, is whether it will lull the people in the province into a position of saying, "Well, they have dealt with that issue and it is done," and not really provide the protection.

As it now stands, if no amendments are accepted, will Bill 194 still have your support for third reading or is it, in your estimation, so fundamentally flawed at this stage that it may be better to have nothing than Bill 194? Have you made that determination at this point?

Mr. Elson: I would stand by our statement that we feel it is flawed without amendment. It would be extremely difficult, if not impossible, to support it as it exists because, as we indicated, as read, it provides no protection for nonsmokers within the working environment.

Mr. Kanter: I was just following the last question and answer about the desire you have to see some improvements to the bill. Let me just take another look at the bill as it now stands.

Regulation of smoking in workplaces as is proposed by this bill, without amendment—I do not want to suggest that there will or will not be; I think all members of the committee are quite genuinely listening to the presentations at this point—how would this bill compare with other jurisdictions in Canada, the United States or in other places? That is, would we not be ahead of many other jurisdictions, perhaps most other jurisdictions in implementing this general nonsmoking-in-the-workplace rule, if we were to proceed with this bill, let's say, without amendment?

Mr. Zentner: I will answer that one. I would suggest not. Essentially what this bill does is look at floor area. Most municipal bylaws treat it the same way. They generally say that smoking is not permitted. This does not apply such that you can permit smoking in a percentage of an area based on the premises.

When you do that, for example, this room might very well be 50 per cent nonsmoking because it is an area of public assembly, as per most municipal bylaws. If this half of the room smokes and this half does not, surely it does not do anything to protect the people who do not smoke from the hazards of environmental tobacco smoke.

Most important, though, what this bill does not do is protect nonsmokers from environmental tobacco smoke by confining it to an enclosed or separately ventilated area. The federal Nonsmokers' Health Act, which I believe came into effect January 1989, states that designated smoking areas in rooms be enclosed and be separate and that where they are provided after 1990 be separately ventilated. That is better than this in that in the future they will be separately ventilated and, as of now, they will be enclosed or separate. I think this one falls short of that in that respect.

Another problem with this piece of legislation and the federal bill and, as far as I know, all municipal bylaws, and a point brought up by a member of the Toronto Workers' Health and Safety Legal Clinic is that the employer can conceivably take action against an employee who makes a fuss about where there is smoking and what is an appropriate separated area perhaps.

Under the Ontario Occupational Health and Safety Act, section 24 I believe, there is a clause that essentially is a no-reprisal clause stating that the employer cannot dismiss, threaten or coerce the employee in any way. I know for a fact that where it is difficult or where people have made a "fuss" regarding the smoking policy that there is no recourse for them under municipal bylaws, under this legislation or under the federal legislation and there is a recourse only under this which I think is a fault of all smoking legislation currently.

Mr. Kanter: If I might just pursue those answers, the federal legislation as I understand it applies to federal workplaces—

Mr. Zentner: Yes.

Mr. Kanter: —and common carriers which is perhaps 10 per cent of the workplaces in Ontario. Municipal bylaws, while they are in effect in some municipalities, I do not know how many and presumably there are many municipalities that are excluded. Surely, it would seem that there would be a considerable expansion of the number of people covered by a provincial law that could go so far as to prohibit smoking entirely. I do not think we should lose sight of the fact that the 25 per cent is a maximum permissible limit.

The gentleman who was here before you, while he did not generally agree with a lot of the things you are saying, he was concerned that it might be too harsh and that many employers might not bother to designate and therefore leave their entire workplace area a nonsmoking area.

It would seem that in a number of significant areas, coverage of the percentage of workplaces, coverage of the workplaces in a number of municipalities that are not now covered and certainly coverage in those workplace areas where employers did not exercise their option to have a 25 per cent nonsmoking area, this would expand coverage considerably, not perhaps as far as you might like. Obviously, some of the things you are suggesting are expensive and would go beyond the federal legislation. Requiring ventilation systems would clearly be an expensive undertaking, particularly of older buildings. Would not—



Mr. Chairman: Are you leading up to a question?

Mr. Kanter: Yes, I am just getting to the question phrase. Would not the bill lead to considerable expansion of the rights or privileges of nonsmokers from what we have today?

Mr. Zentner: You are right in that a greater number of employees and a great number of workplaces will be covered under the legislation. That cannot be argued with. My problem is that, the legislation, in permitting smoking in 25 per cent of the floor area—it would nice if people thought: "I am not going to bother. We will have it 100 per cent." I am not sure that would happen. I do not think so.

More people will be covered, but if they are covered by something that does not protect the nonsmoker and does not confine the smoke to a separately ventilated area or at least an enclosed area, then I do not think it will serve as a measure to help employees with respect to the health hazards associated with secondhand smoke.

Mr. Daigeler: We have received a brief from the Canadian Federation of Independent Business. I was just wondering whether you had a comment on that particular phrase. I am quoting now. "Your overall approach to drafting Bill 194 was to balance concern for safety with what is both practical and practicable." I do not know whether you would care to comment on this general approach to the bill.

Mr. Elson: Yes, I would say that I guess the balance or equity of this in a sense is in the eye of the beholder. We see nothing balanced if in fact the status quo is something that people have an interest in preserving. If that is what people would perceive as being practical, then I guess it would be practical.

The status quo across the province is not something that is acceptable to us with respect to the fact that people, excellent workers, say, who are smokers have to co-exist and work with others who have extreme allergies related to tobacco smoke. In fact, excellent people leave jobs because they are nonsmokers and cannot tolerate the environment in which they are forced to work.

Mr. Miller: I am concerned about the fact that my friend Norm mentioned secondhand smoke affecting his health. I support that. I would not want to do anything that is going to affect somebody else's health, but is there any evidence that secondhand smoke in a properly ventilated room is detrimental to somebody else's health?

Mr. Zentner: I am not an expert on that. I am sure you will have evidence as the day goes on suggesting that. There is a plethora of studies that, first of all, infer that if smoke is harmful to the person who is smoking it and that it causes cancer, then surely secondhand smoke is harmful to people who do not smoke, because they are essentially smoking the same constituents.

That is an inference. I am sure there have been scientific studies to compare what the intake of the constituents of tobacco smoke for nonsmokers is in relation to looking at the contaminants in bodies, urine, etc. to extrapolate how much smoke they are actually smoking.

I have before me one study, Deaths in Canada from Lung Cancer due to



Involuntary Smoking. Essentially what it does is, through mathematics, which can be argued, estimate that 330 deaths due to lung cancer can be attributed to environmental tobacco smoke. This is not necessarily in the workplace. In fact, it is primarily due to spousal smoking, but a significant component is from people exposed to environmental tobacco smoke in the workplace.

Mr. Elson: The issue you raised, though, I believe is related to the actual risks, if any; whether adequate ventilation within a confined space would eliminate the risk to nonsmokers from secondhand smoke. Is that what—

Mr. Miller: With the presentations we have already had, I do not think there is any clear evidence that indicates that in a properly ventilated space, such as this, where the air is moving freely, it would be detrimental to you. Take somebody who works in a garage, who has to work with automobile exhaust: How can you sort out what is causing the problem? I guess there is documented evidence, proof; but if it is properly ventilated, I question it.

Second, you are suggesting a \$25,000 fine for something that is not illegal. It is legal to smoke, but you are suggesting we increase that fine to \$25,000 for smoking if that smoker is caught smoking in the wrong place. How can you justify that?

Mr. Zentner: With respect, the recommendation of \$25,000 applies to the employer. Subsection 8(1) suggests there be a \$2,000 fine for every person who contravenes this section. Subsection 8(2) is with respect to the employer; it is there that we apply the \$25,000. That is to be consistent with the Occupational Health and Safety Act, because I think that is what we are talking about here when we are talking about environmental tobacco smoke.

If the fine were to be applied to someone who does not act according to the legislation, it does not necessarily mean it was simply because someone was smoking where they were told not to smoke. That would be subsection 8(1) and that would be a maximum of \$2,000. I think \$25,000 is in line if you are talking about an employer who is very profitable, and if there were legislation requiring that independently ventilated rooms be provided and the employer did not provide that. I think there should be stiff penalties, because the employer is in a sense contravening the act and is showing disregard for the health and safety of his employees. Keep in mind that \$25,000 is a maximum that ranges from zero to \$25,000, so I have no idea what the final result might be.

Mr. Chairman: Thank you very much, Mr. Zentner and Mr. Elson, for coming before our committee and presenting us with your perspective on this bill. We appreciate that. As you have indicated, we will probably be hearing more evidence along the line of Mr. Miller's question from other presenters later in the day and tomorrow. Thank you for coming.

Mr. Elson: Thank you very much.

Mr. Chairman: Members of the committee, that concludes this morning's presentations. I remind you that there is a revised schedule for this afternoon in front of you which shows we should be here at 2 p.m. We have a pretty full afternoon, so I request that members try to be here on time.

The committee recessed at 11:36 a.m.



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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

SMOKING IN THE WORKPLACE ACT

TUESDAY, APRIL 18, 1989

Afternoon Sitting



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Neumann, David E. (Brantford L)

VICE-CHAIRMAN: O'Neill, Yvonne (Ottawa-Rideau L)

Allen, Richard (Hamilton West NDP)

Beer, Charles (York North L)

Carrothers, Douglas A. (Oakville South L)

Cunningham, Dianne E. (London North PC)

Daigeler, Hans (Nepean L)

Jackson, Cameron (Burlington South PC)

Johnston, Richard F. (Scarborough West NDP)

Owen, Bruce (Simcoe Centre L)

Poole, Dianne (Eglinton L)

Substitutions:

Cleary, John C. (Cornwall L) for Mr. Owen

Kanter, Ron (St. Andrew-St. Patrick L) for Ms. Poole

Kozyra, Taras B. (Port Arthur L) for Mrs. O'Neill

Miller, Gordon I. (Norfolk L) for Mr. Beer

South, Larry (Frontenac-Addington L) for Mr. Carrothers

Sterling, Norman W. (Carleton PC) for Mr. Jackson

Clerk: Decker, Todd

Staff:

Nishi, Victor, Research Officer, Legislative Research Service

Witnesses:

From the Toronto Workers' Health and Safety Legal Clinic:

Leitch, David, Director

Individual Presentation:

Levy, Roslyn, Public Health Nurse

From the Student Movement Aimed at Restricting Tobacco:

Sider, Rob, Director, Communications

Cunningham, Rob, President

LeGresley, Eric, Vice-President

From the Ontario Lung Association:

Hill, Dr. J. Stanley, President

Whiteside, Doris, Director, Public Relations

From the Addiction Management Systems Inc.:

Borg, Charles, Vice-President, Client Services

From the Ontario Flue-Cured Tobacco Growers' Marketing Board:

Bouw, Albert, Vice-Chairman

Csubak, Joe, Director

From the Allergy Information Association:

Daglish, Susan, Executive Director



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Tuesday, April 18, 1989

The committee met at 2:05 p.m. in room 151.

SMOKING IN THE WORKPLACE ACT  
(continued)

Consideration of Bill 194, An Act to restrict Smoking in Workplaces.

Mr. Chairman: Perhaps we could get going. This is a meeting of the standing committee on social development called to consider Bill 194, An Act to restrict Smoking in Workplaces. The first two delegations this afternoon have 15 minutes each. They were added as late requesters, and I understand the Toronto Workers' Health and Safety Legal Clinic have indicated that they do not need a lot of time, so we fitted them in at 2 o'clock for 15 minutes.

Welcome to the committee. If you want to leave part of the 15 minutes for questions, you may do so. I am sorry, I should have introduced you. We have before us David Leitch, the director.

TORONTO WORKERS' HEALTH AND SAFETY LEGAL CLINIC

Mr. Leitch: Good afternoon, everyone. I do not need much more than 15 minutes because I am not going to deal with the bill in total. I am going to deal with one specific aspect of the bill, which has come to our attention and which is of great concern to us.

First, a word or two about the organization that I work for. I am the director of the Toronto Workers' Health and Safety Legal Clinic. It is a legal clinic funded by the Ontario legal aid plan to assist unorganized workers, that is to say workers who do not have the benefit of union representation, with occupational health and safety problems.

As all the members of this committee will know, the vast majority of workers in Ontario do not have the benefit of union representation. When we look at this bill, we look at, from our perspective, the rights of workers who do not have the protection of a collective agreement. Of course, the usual thing that is in a collective agreement, in fact in every collective agreement, is a provision which protects employees from wrongful dismissal or unfair discharge. I think if that is not there, it is read into every collective agreement by the Labour Relations Act.

If you do not have that protection because you do not have a union, then your protection from wrongful dismissal has to be found in the provincial law. Common law, you might know, does not provide any protection against unlawful dismissal as such; it only imposes an obligation on employers to give notice. So if workers are fired for raising, in this case, the matter that concerns us today, problems having to do with smoking in the workplace, they must find protection, if any, in the provincial statutes which govern health and safety.

I have put before you a section of the Occupational Health and Safety Act, which is of course the main statute in Ontario which governs health and safety in the workplace. There is a section, section 24, there which says in

effect that employers cannot or should not—and if they do, they can be met with complaints from employees—discharge employees for attempting to enforce their rights under that act. As I say, the remedy is that the worker can go to the Ontario Labour Relations Board under section 24. It is also an offence under that act and can be prosecuted as such in the provincial court.

The problem we have here is that this section talks about workers who attempt to seek enforcement or act in compliance with this act or the regulations, this act being the Occupational Health and Safety Act and the regulations being the regulations under that statute. The problem that concerns us and the reason we asked for standing to come before you today is that the bill you have before you, Bill 194, does not have an anti-reprisal section in it. That is what I refer to section 24 of the Occupational Health and Safety Act as, an anti-reprisal section.

The bill which you have before you does not have any such protection in its own text or provisions. Furthermore, it would appear to us at least that there may be very great difficulty in arguing that workers have the protection of the Occupational Health and Safety Act if they are fired for attempting to raise the smoke issue in the workplace, because they would then be attempting to, perhaps the argument would go, enforce Bill 194, but that does not have an anti-reprisal section in it and section 24 would not cover it, because you are dealing with a different statute. Is everybody with me on that so far?

1410

This problem exists not just with respect to this bill; it also exists with respect to smoking in the city of Toronto's bylaw, the city of Etobicoke's bylaw or the city of Markham's bylaw. None of them, in my understanding, have any protection against reprisals in them. They all say the employer must do the following things and employees are required to comply, but in the event that there is a problem and the employer does not like the fact that the employee is making noise and making trouble and insisting on essentially enforcing these rights, that employee can just be fired. There is no protection in those municipal bylaws, as there is not in Bill 194.

We are lawyers at the legal aid clinic and my colleague Garth Dee has written a letter which is also before you, in which he has expressed the opinion, with which I agree, that clause 14(2)(g) of the Occupational Health and Safety Act may apply. That is the general duty provision of the Occupational Health and Safety Act and it simply says—you have it before you as well—that employers must "take every precaution reasonable in the circumstances for the protection of a worker."

We intend to argue, in the cases we now have before the labour relations board, that the precaution that is reasonable under this act is compliance with the other act, Bill 194 or the municipal bylaw or indeed other statutes which create obligations on employers to keep a healthful and safe working environment. That interpretation of the law, however, has not so far been ruled upon one way or the other, and that leaves employees in a very precarious position.

We find it odd, in particular, that section 32 of the Occupational Health and Safety Act is brought in specifically to deal with the question of appeals of inspectors' orders to the director of appeals under that act. It would seem, in other words, that the drafters of this legislation turned their minds to the question of workers having rights under Bill 194 and also having rights under the Occupational Health and Safety Act. But one of those that the

drafters did not consider is the right to protection from wrongful dismissal or unfair dismissal: essentially reprisal for attempting to enforce Bill 194.

That is essentially the point I want to make. I do not know if I have used up my 15 minutes yet. I doubt that I have. There are some other points I could make, but I just thought perhaps it would be useful for me to pause there and ask whether I have made myself clear and whether there are any questions.

Mr. Chairman: You have about five minutes left, so let us see if there are some questions.

Mr. Allen: Yes, I think you have made your position clear and it is a very good point with respect to this bill and the legislation that you refer to in Toronto and other municipalities. We also have in our hands the appropriate section of the Occupational Health and Safety Act. I notice there is not only subsection 24(1), but quite a lengthy section with eight subsections in it that relate to reprisals by the employer being prohibited.

Are you suggesting that the straightforward inclusion of the exact language, let us say of subsection 24(1) under part VI of that act, would be the appropriate thing to do, or is more needed than that?

Mr. Leitch: In fact, we are not sure, as I said earlier, that you would succeed just on that language. I do not know if you are familiar with it, but in the federal jurisdiction, one of the points that has come up is whether workers can refuse to work when the danger is not imminent. The law is that you cannot refuse in the federal jurisdiction unless the danger is imminent. So that raises the issue of whether cigarette smoke, passive or otherwise, creates an imminent danger for workers, which issue also has not been ruled upon by the Ontario Labour Relations Board.

To answer your question, I would like to see not only the application of section 24 of the Occupational Health and Safety Act to other statutes like the one you are considering, but also some clarification of section 23, the section which gives the right to refuse unsafe work, so that workers can refuse to do work which is not only imminently dangerous to their health but which is dangerous to their health on a long-term basis or over a long period, when they might be expected to work in those conditions.

It is clear to us that we are going to make this argument. It is not clear to us that we are going to succeed. It ought to be clear enough in the legislation to be something where we know we have protection from long-term, not just imminent, dangers.

Mr. Daigeler: In the document you left with us, the letter to the minister, the way you phrase your first paragraph implies that the action taken with regard to these workers was in direct consequence of their seeking compliance with bylaw 23-88. Is this factual?

Mr. Leitch: Absolutely factual.

Mr. Daigeler: I ask that question in order to determine to what extent the fear of reprisal is a justified one. I would like to hear from you whether this has been substantiated or whether this is just an allegation at this point.

Mr. Leitch: I can tell you about the three different cases. I cannot



give you names of people because of solicitor-client privilege. One worker was fired outright. She was fired because she continued to complain about the smoke in the workplace and eventually the employer said, "If you don't like it, I'm going to fire you." Those are essentially the facts of that case. It is not complicated.

In another matter, the worker himself was a nonsmoker. There was an agreement reached with the employer that smokers would smoke in a particular area. Those employees, the smokers, who were supposed to smoke in that particular area, continued to smoke outside of that area. The employee said to the employer: "You're not really achieving compliance with the bylaw. That's not what the bylaw requires." He has been suspended. I spoke to him today. He has been suspended and he is waiting now to find out whether the employer is going to carry through with the suspension as discharged or what.

The third case has not gone quite that far in that the employee has not been suspended or fired yet, but her expectation is that if she raises this issue, she is going to be fired.

Of the three cases we have, I think two have gone far enough to demonstrate the point amply, and our expectation of the other one is that it will and therefore we supplied the employee with a letter explaining the provisions of the municipal bylaw.

Unfortunately, one of the provisions of the municipal bylaw is not, "You are protected from reprisal." Of course, we express the opinion that section 24 of the Occupational Health and Safety Act may apply, but we do not know for sure if that is the case and we think that if you had it in Bill 194 things would be a lot better for employees.

Mr. Chairman: Thank you very much, Mr. Leitch. You certainly bring an interesting perspective to the committee with the experience you have had. We thank you for drawing this to our attention.

Members of the committee, before we proceed with the remaining delegations, you may have noticed that platform being set up outside the room. The clerk has told me that at five o'clock the Lieutenant Governor is conferring the 1988-89 Order of Ontario awards.

We should be done by five, but from five on we may start to get interference with music and so on, and it is probably better that we not interfere with their ceremony as we leave so I would appreciate the co-operation of the committee in sticking to our time schedule today.

Roslyn Levy is here as an individual to make a presentation. You have 15 minutes. You may leave some time for questions if you wish.

MRS. ROSLYN LEVY

Mrs. Levy: Thank you for giving me the opportunity to speak before this committee. Professionally, I am employed as a public health nurse and in this capacity I am involved in prenatal, post-natal and general health education in the community. My intention in appearing before you today is to share my professional experience with you and to make recommendations regarding amendments to Bill 194.

There is a well-established body of evidence that active smoking by pregnant women is linked to various forms of pregnancy problems such as



miscarriage, still births, lower foetal birth weight and growth retardation. Studies now suggest that involuntary smoking by pregnant women, that is, exposure to environmental tobacco smoke, may also be associated with adverse health outcomes.

1420

Secondhand smoke consists of both mainstream and sidestream smoke. The first is the smoke inhaled and exhaled by the smoker, while the second is the smoke which rises from the burning end of a cigarette. The latter is the more toxic of the two. Of course, the secondhand smoker is getting both.

Via prenatal education classes, their own physicians and word of mouth, expectant parents learn about the harmful effects of tobacco smoke on their unborn children. Since our society does not have a system in place where the foetus is assured a smoke-free environment while our expectant moms are at work, except of course in our provincial and federal workplaces, where we have implemented a total ban on smoking, we continue to compromise the health of our unborn citizens.

The rationale which won smoke-free policies for federal and provincial workplaces should be the same basis for smoke-free environments for all the people of Ontario, especially our future generation.

We, as a government, responded to research data regarding the potential for harm to the foetus from video display terminals. Currently, we have a situation where we know of the hazardous effects of environmental tobacco smoke on the foetus, yet pregnant women are often forced daily into situations where they are potentially and often unknowingly providing risk to their unborn children.

We are providing information about the harmful effects of environmental tobacco smoke on the foetus via our prenatal educators, physicians and the media. We are also encouraging expectant mothers to avoid exposure to environmental tobacco smoke during their pregnancies and beyond, and then we place them into risky situations by allowing smoking in the workplaces.

The majority of working expectant mothers in our society continue to work until their ninth month of pregnancy in order to maximize the advantages of the Unemployment Insurance Commission's maternity benefits. Seventeen weeks are in place right now, so in order to get the majority of your benefits after the birth of your baby, you work until the day you go to the hospital. You, as the provincial government, can do more to provide for healthy future citizens and reduce, in the long run, the health care costs which are caused by foetal exposure to environmental tobacco smoke.

Many of you are parents, or will be, and perhaps there are even some grandparents present. As well, you all must have some instances you can recall where you have witnessed a smoking ban in a household as a result of an unborn or newborn child. This has become, more recently, a socially accepted policy. With the facts available today, Ontarians have a responsibility to provide the safest environment for our next generation.

I should add that, as a public health nurse, I visit new babies in their homes. We make one visit to new parents after the birth of a baby. It is very, very common nowadays for the enlightened to have a sign saying "Thank you for not smoking," or "Welcome to a smoke-free home." It is quite an awareness. Grandparents, neighbours, uncles, aunts and friends are all stepping outside

to have that puff of the cigarette. The awareness is heightening, so we are ready for some action.

Obviously, we need a comprehensive, collaborative, grass-roots approach if we are to realize a healthy Ontario by the year 2000. We have only 11 years left to go. Our society has certainly become more accepting of the cause. What we need now is effective legislation from the Ontario government, taking the interests of our future citizens into account, in order to provide the safest and healthiest environment possible while they are in the protective custody of their mother's body.

The issue is not and has never been about the freedom of individuals who choose to smoke to smoke. Rather, the issue is only about where they may light up.

The 25 per cent of the area as designated in Bill 194 is really meaningless. Under 50 per cent would be fine if it were isolated from the air that nonsmokers must breathe. I urge you as members of the Ontario Legislature to consider the following recommendations regarding Bill 194. If the intent of this bill is to restrict smoking in the workplaces in Ontario, then the government must introduce a total ban on smoking in order to protect all workers and our next generation.

In the absence of this recommendation, I then urge that enclosed, designated smoking areas be mandated, with separate ventilation to the outside. The doors to these spaces should be self-closing in order to minimize infiltration of smoke into the work spaces.

I will just leave with the thought that, after all, it is not as if the baby can just leave the womb.

Are there any questions? I have a couple more points I could make.

Mr. Chairman: Go ahead, or do you want to take questions first?

Mrs. Levy: If there is anything at all.

Mr. Chairman: Are there any questions up to this point? Generally, it is customary for you to complete and then we ask questions.

Mrs. Levy: I was sort of following the former speaker.

I am just supporting this whole concern in the health sector, and actually in the public at large, to have the healthiest babies possible. People are waiting a little longer to have their first babies; they are really concerned about prenatal care. Every baby counts these days. Often you wait until your late 30s to have a baby. People are generally going to prenatal classes, the enlightened majority, and a lot of things are popping up supporting it.

American Express has worked with the regional municipality of York to put together a pamphlet that says—I did not have enough of these for everybody, so I just mention it—"Smoking is a women's issue. Smoking mothers increase the risk of foetal complications such as still birth, low birth weights, miscarriage, eye defects and sudden infant death syndrome," which is SIDS. "Secondhand smoke over several hours daily can also affect your unborn baby's health." To put somebody who is pregnant in a smoking environment for nine months knowing this is true is really detrimental to our future citizens, and it is going to increase health care costs.

We also have in our organization cards such as this, a congratulations card which is often given to new moms when the babies are born during National Nonsmoking Week. It says: "Congratulations. You have made your contribution to Canada's next generation. We urge you to do your part to make it a generation of nonsmokers. Secondhand smoke is a significant health hazard to your baby. Parents who smoke set an example imitated by young, impressionable children. Welcome your baby into a smoke-free home."

This is from the Canadian Council on Smoking and Health, a national body. Along with that we have these little T-shirts to pass out that you might have seen. I just wanted to drive my point home that there is a whole body of support out there. These look great on newborn babies, and they really get society hyped up. I did not have one for everybody.

That is it.

Mr. Chairman: Are there any questions in the remaining time? We have about five minutes if you would like to ask questions.

Mrs. Cunningham: What can I say? Talk about a visual presentation that hits home. The more you do it, I think, the more people will listen and be convinced.

Earlier today we were listening to another presentation which tried to convince us that the evidence is not there, that secondhand smoke is not really—There are mixed feelings, mixed observations and mixed research on that particular issue. Of course, we have had some briefs that tell us just that. You seem to be convinced that there is pretty solid research

Mrs. Levy: I am not the person to put those facts in order. I know it is coming; we will hear it before tomorrow. There is a medical doctor who is coming to speak who will probably serve the purpose. I did not really take the time to do a lot of research statistics, because I know there are other people, experts, who will be speaking. I wanted to come from the community angle and the concern of the public and public health professionals.

But there is evidence that secondhand smoke is as detrimental in narrowing the arteries so that there is less circulation, less oxygen in the mother's bloodstream. As we know, when the baby is in the mother's uterus the only way that baby is breathing, so to speak, is by getting the oxygen from the mother's bloodstream through the umbilical cord; no other way. If the mother is getting less oxygen through her bloodstream from narrowed arteries from exposure to secondhand smoke, then the baby is thus affected and the birth weight of the baby averages about half a pound less than normal. It is just another risk factor. You will hear it, but given that that is a fact, you can see the concern.

Mr. Chairman: Is that half-pound for mothers who smoke or for those exposed to secondhand smoke?

Mrs. Levy: If the mother smoked or—I think it would show that exposure to secondhand smoke would be similar. It is all quantity. If you are exposed to 50 cigarettes passively in a day or you are smoking five on your own, there is the balance.

Mr. Chairman: Sorry to interrupt.

Mrs. Cunningham: No, that was an interesting question. In your work



as a public health nurse, I wondered if you would give us your insights into a statement that was made during the task force that went out across the province in 1982. It is a simple one. They said that even the smokers and the nonsmokers agreed that there ought to be some regulations, which I thought was interesting. Is that the feeling you get out there?

Mrs. Levy: I interview everybody I know who smokes, because I want to understand this syndrome. I am a very tolerant nonsmoker. I will step outside our house with our friends who choose to smoke, but they do not smoke in our house, because knowing what I know I just cannot tolerate having my breathing system abused.

1430

If you ask adults who smoke when they started, they will generally tell you they started between the ages of 12 and 16 or 18. Ask them about quitting and they will usually say, "Yes, it's getting to be such a pain and so socially unacceptable that I'd like to quit." You get those two points. Then you get smoking bans in offices. Ask the same people and a lot of them will say: "Good. I was trying to cut down anyway. This is helping me." I know there are a lot of people out there I have not hit. But just from my own conversations with people, you can certainly hear that kind of answer.

Mrs. Cunningham: Given your dynamic presentation, I would think they probably would not tell you what they really think about that anyway, because they would probably get a response they do not want to hear.

Mrs. Levy: I do not come across like that all the time.

Mr. Allen: Thank you very much for reinforcing in these hearings the whole question of the impact of secondhand smoke, particularly on the foetus and young children, whether through the vital chemistry of the mother or through the immediate context of the culture of the family and the critical nature of that.

I wonder if you are familiar with Dr. Pengelly's studies in Hamilton. He started in 1978 with 3,200 children, ostensibly to try to discover what the impact was of environmental air pollution in general upon children in terms of their measurable respiratory problems, and discovered there was almost no measurable impact he could discover. But to their surprise, they did discover that smoking by the mother was absolutely the critical factor that determined whether children were likely to have respiratory problems as they grew up.

In the course of following those children over subsequent years, he has done a fairly interesting longitudinal study in that respect. The interesting conclusion he comes to is that it is the young women in particular who are most severely impacted in all this, because not only do they get it in some instances in foetal form; they get it reinforced in terms of the mother's image and the pattern; then they get it in terms of the physical fact of being in the household; and they get it again when they become teens and the culture of their own peers seems to reinforce that somewhat at this time. That is a very interesting set of studies he has done, and I wondered if you were familiar with that.

Mrs. Levy: All kinds of statistics and data cross my plate. As I said, I did not research everything for today, just what I needed, because I knew I was one of the last people who had the time. Yes, I am familiar with it and have heard it.



Basically, if we are going for a smoke-free generation, and we have till the year 2000, we have 11 years, we are talking about the reasons that young people start to smoke. It was always adult role models, peer pressure and advertising in the media. We used to see people on TV—well, TV is gone, but we used to see TV actors and people smoking.

We have done something with Bill C-51, wiping out the Canadian media advertising, and we will see some results, because we spend time in the schools. We were spending a third of our time talking about the effects of the media advertising tobacco and how they are trying to get people on board: "If you smoke these cigarettes, you can ski well and you'll have cars and romance and all the good things in life." We have been butting our heads against that one for a while, but now life is going to be a little easier in a couple of years, because the billboards will not be there in Canada. We have wiped that one out, but we have the role models and the peer pressure.

We are handling the peer pressure by approaching the young children in a classroom, the class of 2000, starting with the very young kids, letting the community at large get on board and create an environment that advocates a smoke-free environment. Whether the adults continue to smoke is not my concern or a lot of our concern. We are tired of worrying about getting people to quit, a lot of us. We are worried about prevention.

If we knew what these kids are going to know, we would have done things differently also. Along that whole line, if we are starting with our next generation, we are better to start with them before they are born. It just seems so logical.

Mr. Chairman: That is an excellent note to end on. I want to thank you for sharing with us your perspective on this issue.

The next presentation will be from the Student Movement Aimed at Restricting Tobacco, sometimes shortened to SMART. My agenda says Rob Cunningham, president, and Eric LeGresley, vice-president, but there are three individuals. Gentlemen, please introduce yourselves to the committee, and welcome to the committee.

#### STUDENT MOVEMENT AIMED AT RESTRICTING TOBACCO

Mr. Sider: Good afternoon. I am Robert Sider. I am director of communications for the Student Movement Aimed at Restricting Tobacco, also known as SMART. I would like to thank the committee for giving us this opportunity to make a presentation before it. SMART was conceived in April—

Mr. Chairman: Would you introduce the other gentlemen before you proceed.

Mr. Sider: On my right is Rob Cunningham, president of SMART, and on my further right is Eric LeGresley, vice-president of SMART.

SMART was conceived in April 1988 as an outgrowth of a constitutional law assignment at the University of Toronto, faculty of law, which concerned the constitutionality of a ban on tobacco advertising.

Research in the area disclosed, among other things, the severe inadequacy and anachronistic nature of the laws protecting minors from the dangers of tobacco. It was also discovered that nearly all smokers begin their addiction in their teenage years.

Since making these discoveries, the members of SMART have been dedicated to drawing attention to these inadequacies and having smoking laws redrafted so as to protect minors in a meaningful way. This has included recently the successful prosecution of a Shoppers' Drug Mart store for selling tobacco to minors, a prosecution which has led to increased awareness of the problem by the public and members of the Legislature.

Today, Rob Cunningham and Eric LeGresley will address the problem of smoking by students at school and how it can be related to smoking-in-the-workplace legislation. Rob will also say a few words on the issue of sale of cigarettes to minors.

Mr. R. Cunningham: Just before we present our principal submission directly related to Bill 194, I would like to take advantage of the chairman's remarks yesterday that groups could make reference to other private members' bills that have been introduced. I understand that Mr. Sterling's Bill 215, the Tobacco Sale to Minors Statute Law Amendment Act, and Mr. Allen's Bill 221, the Tobacco Sale Regulation Act, have been distributed by the clerk to members of the committee.

As my colleague Rob Sider noted, since SMART was founded, we have been vigorously advocating new laws to prevent the sale of cigarettes to minors. The fines in the existing Minors' Protection Act included in the appendix to our brief, an act first passed in 1892, have never been increased. They now stand at a minimum of \$2 and a maximum of \$50. A few months ago, we saw how a corporation with over \$2 billion in sales annually, Shoppers' Drug Mart, had one of its stores fined \$25.

Our test surveys demonstrate that this act is severely antiquated. In August and September 1988 the survey found that 25 out of 30 Shoppers' Drug Mart stores in Ottawa and Metropolitan Toronto sold cigarettes to minors despite the law. An October 1988 survey in Metro Toronto found that 46 out of 50 store retailers sold cigarettes to minors. A repeat survey of the same outlets in January 1989 found that, again, 46 out of 50 stores sold cigarettes to minors.

The current law is a joke, as evidenced by the total market in Canada for tobacco sales to minors which exceeds \$250 million annually. What is required are laws to give retailers an economic incentive to obey the law, instead of what you find now, economic incentive to disobey the law.

A three-pronged approach is needed to prevent the sale of cigarettes to minors, which includes: first, fines that would substantially increase the present levels; second, retailers should face the loss of a tobacco licence for selling tobacco to minors; and third, there should be a ban on vending machines in areas accessible to minors.

Norman Sterling and Richard Allen are to be particularly commended for their action and concern in this area. Their statements and questions in the Legislature and their sound and thoughtful private members' bills represent a positive view to healthy public policy. Indeed, most members of this committee are to be commended, for they have written to us with support for our suggested legislative initiatives.

A brief on the issue prepared by the Canadian Cancer Society, which has been sent to all members and endorsed now by about 30 organizations, has included in its recommendations the three matters that have been noted above earlier by myself.

In its deliberations on Bill 194, SMART urges this committee to remember that there are other areas in the tobacco arena that require legislation. Members are asked to press the Minister of Health (Mrs. Caplan), the Minister of Community and Social Services (Mr. Sweeney), the Minister of Consumer and Commercial Relations (Mr. Wrye) and the Attorney General (Mr. Scott) to act on this crucial health matter, and further, to support the bills of Mr. Sterling and Mr. Allen and any others that might subsequently be introduced when they arise in the next session.

#### 1440

With regard to our principal submission today on amendments to Bill 194, I will turn the floor over to my colleague Eric LeGresley, who will be doing the presentation.

Mr. LeGresley: My task today is straightforward. I am here to convince you that the very purpose for initiating the Smoking in the Workplace Act would be furthered by including within the ambit of this act students in the school setting.

Of course, we all know that schools come under the jurisdiction of the province and that schools are the workplaces for many thousands of teachers, support and administrative staff all across Ontario. For these individuals, smoking within the schools will be regulated by Bill 194.

However, Bill 194 as it presently stands leaves unregulated and unprotected smoking by the most vulnerable segment of our society, hundreds of thousands of youth enrolled in our educational institutions, especially if students at school are viewed to come under the clause 2(2)(b) exclusion of "an area used primarily for serving the public." It would be curious and even antithetical to the intent of the act if we were to protect one portion of the public against the ravages of smoking in their daily workplace and leave unprotected that group most in need of protection.

First, though, we should consider what the term "workplace" means. This committee could take a narrow, pedantic view of this term. You could say that for the purposes of this act, workplaces are where one performs a task for financial remuneration and that is all; that since students are not paid, schools simply are not the workplaces of students.

I believe this conclusion would be false but, more important, I feel this conclusion would be undermining the intent and the spirit of what Bill 194 is all about.

If we ask ourselves why we would want to regulate smoking in any workplace, I believe we would likely come to four basic reasons. First, the workplace is where individuals spend a substantial portion of their time. Second, the workplace is where individuals by necessity interact with others on a continuing basis. Third, the workplace is central to an individual's self-definition and sense of wellbeing and self-worth. Finally, the workplace is where individuals make a productive contribution to society.

I believe it is these values we wish to advance with Bill 194 and these interests we wish to protect when we choose to regulate the use of a dangerous product in the workplace.

Is it not true that all of these reasons are just as valid when applied to our children in the school setting? Students obviously spend just as much



time at their school as employees do at their workplace; the school is where impressionable youths interact daily with their peers; and the school is where students achieve self-fulfilment and become productive members of society. The school setting is every bit as crucial to the wellbeing of the student as the place of employment is to the wage-earner.

When we look deeper into Bill 194, when we look at the reasons for having this bill in the first place rather than just taking a superficial glance at the title, we see that regulating smoking by students in a school setting is entirely compatible with the intent of Bill 194. By regulating smoking by students in the school, the effectiveness of Bill 194 would be greatly enhanced.

More than this, though, by including students Bill 194 would create a continuity in the approach that we, as a society, take towards the protection of individuals. We would no longer be saying that one group, wage-earners, deserves greater protection than another group, students.

Additionally, I think this committee should be seeking, wherever possible, to make this bill conform to major government objectives. Certainly one of these objectives is the creation of a smoke-free society, which we heard about earlier. In fact, on November 30, when the Minister of Labour (Mr. Sorbara) introduced the bill into the Legislature, he said, "Today, we are taking another step in the direction of a smoke-free society."

However, we know that virtually all smokers begin when they are of school age. In a startling fact, the Canadian Council on Smoking and Health tells us that in the last 20 years the average age for starting smoking has fallen from 16 to just 12 years of age. Further, almost nobody begins smoking after the normal age of completing high school.

We have a chance here with Bill 194 to move one step closer to that goal Mr. Sorbara described. If we include in Bill 194 students in their workplaces, their schools, we can help head off the next generation from starting an undesirable habit and further an important government objective.

Mr. R. Cunningham: SMART is submitting that Bill 194 be amended to prohibit students from smoking on school grounds, on school buses and while attending school activities. Draft wording for such an amendment is included on page 7 of our written brief, and that is for your consideration. There are at least five compelling reasons students should be prohibited from smoking on school grounds.

First, simply put, schools should not be condoning illegality. The federal Tobacco Restraint Act prohibits anyone under 16 from smoking cigarettes in a public place or from possessing cigarettes at any time. The provincial Minors' Protection Act prohibits the sale or giving or furnishing of tobacco to anyone under 18. Thus, an illegal act occurs before any student under 18 can have cigarettes. To allow students to smoke on school grounds is to foster disrespect for the law among our youth at the earliest of ages. By prohibiting smoking, students would be taught the importance of the law, not its irrelevancy.

A second reason is an educational one. As of next September, pursuant to an announcement by the Minister of Education (Mr. Ward), education on the hazards of tobacco will be mandatory in schools across the province. If a school were to continue to allow smoking on school grounds, schools would be sending a conflicting message to students. On the one hand, smoking is



harmful, but on the other, smoking is okay and permitted. Messages in the classroom as well as health promotion campaigns by the Ministry of Health are seriously undermined.

The third reason is one of safety. Schools should not be permitting students to engage in unsafe, unhealthy activities on their premises. The government prevents students from using unsafe football equipment, drinking unsafe water and so on. By the same token, students should be prevented from using tobacco, a substance that is inherently harmful.

The fourth reason is one of the major reasons young people smoke, namely, peer pressure. For youth, schools are the focus of peer pressure. Schools are the environment where students are striving to be accepted. Too often, young people are seduced to begin smoking against their better judgement because of the influence of their social circle. In providing smoking areas, as secondary schools often do, schools are providing an area for peer pressure to thrive.

The fifth reason also relates to a factor influencing the onset of smoking among youth, namely, that of role models. Young people often want to emulate those who are older or who are particularly looked up to. Every person who smokes is a living advertisement for tobacco products. Schools that permit smoking are permitting the influence of this negative role modelling to be effective. The grade 12 smoker, for example, sends a message to younger students that smoking is a cool and acceptable activity.

There you have five reasons that individually would be sufficient to prohibit smoking by students on school grounds; collectively, however, they present a compelling case, indeed.

As noted in our written brief, an increasing number of American states are prohibiting students from smoking on school grounds in state-wide restrictions. Since our brief was submitted, I have had faxed to me from Washington an update on American laws from Tobacco-Free America Legislative Clearing House. There are now 12 states that prohibit smoking on school grounds state-wide. Eight of these laws were passed in 1987 and 1988, indicating that legislatures south of the border are increasingly recognizing the importance of the school environment in preventing young people from smoking.

Members of this committee are asked to adopt the same position. We do not need a scatter-brained approach across the province on this health issue. We do not need to wait 10 years or five years or even two years to get a school ban. We need decisive leadership at Queen's Park. This committee has a golden opportunity to demonstrate that leadership.

As the United States Surgeon General, Dr. Everett Koop, stated in his 1989 report, just out, "Children and Adolescents hold the key to progress toward curbing tobacco use in future generations." SMART has suggested one simple amendment to Bill 194. We are asking for just that one amendment, an amendment to protect our kids. It is with our strongest urgings that we ask this committee to say yes to health, yes to respect for the law, yes to the future of our young people and yes to a provision prohibiting students from smoking on school grounds.

If there are any questions, we would be pleased to entertain them.

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Mr. Chairman: Does that conclude your presentation? Are there questions from committee members?

Mr. Allen: First of all, I want to commend the Student Movement Aimed at Restricting Tobacco for the very vigorous and intelligent approach it has taken over the months of its existence in tackling the smoking problem, and in particular, the single-mindedness with which it has addressed the essential issue, which is that of the coming generation and the future of smoking in our society. They rightly, I believe, have settled upon a clear and effective target, namely, that if one can tackle the issue with children and young people, then one is probably on the best road to success with this particular cause.

I am not going to ask them questions I might have asked them about whether there are other amendments they would like to see to this legislation, because I suspect their single-mindedness on that particular tactic is what they want to convey to us. Would that be correct?

Mr. R. Cunningham: Correct.

Mr. Allen: You have avoided other amendments because you want to make a single, central point for us; that is, there is a workplace where young people work that is not always recognized as a workplace. I think the more I look at your criteria for a workplace, and I can think of an additional one myself—namely, that it is a place where a person is not there entirely for voluntary reasons—there is good reason for this committee to think of the school as a proper workplace and to find a way to include the school as such a location.

I do not have a question because I think the point is very clear and has been demonstrated so conclusively for me that I do not have a question to ask them about that. I do want to commend them and I do want to reinforce in my own comments, first, the single-mindedness of their strategy, and second, the importance of our considering the concept of the school as a workplace within the framework of this bill.

Mrs. Cunningham: Thank you for your usual direct and strong approach to this issue. I was wondering, in your draft amendments, if you have any research in Ontario right now. Is there a school board that would have taken this stand on its own? Can you just enlighten us?

Mr. R. Cunningham: There are some schools that have taken the initiative on their own. The chairman mentioned yesterday that a board of education in his riding had done so a number of years ago. There is no information available as to what percentage of school boards in the province have done so. Regardless, we do not think there should be a scatter-brained approach. There is sufficient reason for a consistent, province-wide policy.

Mr. LeGresley: I think the point really should be, why should the health of school children be left up to the whims of the individual school administrator, when this really could be dealt with on a provincial basis, as other jurisdictions have done in the United States?

Mr. Chairman: I have a question, having been a teacher myself. I am fully in support of what Brant County Board of Education did, but sometimes people can react the other way to a blanket restriction. Something that is

forbidden becomes even more enticing for young people on occasion. Have you considered that in your presentation?

Mr. LeGresley: I think the amendment we have proposed does deal with that. It gives the teachers the ability to confiscate the cigarettes. If a student decides, "Because I am being restricted from smoking in the school, where I previously could smoke, to hell with them; I am going to go out and do it anyway," that is going to happen for a very brief period of time. The teacher will be able to take the cigarettes away. A couple of instances like that, I think, will encourage the student not to engage in that sort of activity. I do not think it would increase the consumption of tobacco on the school grounds.

Mr. Chairman: Have you investigated the best possible way to accomplish your objective? If this bill had not been before us now, would you have perhaps sought another way? Can what you seek to achieve be done through, say, a regulation by the Ministry of Education?

Mr. R. Cunningham: We have written to the Minister of Education. There has been no answer. That was about a quarter of a year ago, three months ago. We have made some effort in that regard, but as to a specific answer to your question, I am unable to give assistance.

Mr. Chairman: Okay, thank you. Mr. Daigeler has a question.

Mrs. Cunningham: I was not finished.

Mr. Chairman: I am sorry; I thought you were.

Mrs. Cunningham: It is all right. I thought you were just building on mine, and that was all right.

Mr. Chairman: Okay.

Mrs. Cunningham: I agree with your point, except that there are a lot of school boards and municipalities that get upset about provincial legislation. I also happen to agree with you that this issue is big enough that we should be making provincial legislation.

Having said that, if you have information where there were school boards across the province that have taken some stands on this, and I believe all of them have, I am just wondering how many of them would have made very strong policies, like no smoking at school. Even if you had four or five of them, I think it would help us in our decision-making to see those kinds of initiatives come from student councils and school boards.

By the way, they are school board policies, not administrative policies. I believe almost every school board has a smoking policy that would support what you are trying to do but that probably may not have gone far enough, just as we see in the workplace right now. People all say, "Oh, we have a smoking policy," which in my opinion means absolutely nothing when I still have to breathe the smoke.

I just thought that if you had that information and could get it to the committee it might support some of us who want to take a stronger stand or who in fact want to support your recommendation.

The other one: In spite of the statement Mr. Allen made that you wanted



to make a strong presentation around your amendment, would you care to comment on that 25 per cent clause anyway, the one about setting aside 25 per cent? Could we have your view on that?

Mr. LeGresley: I think there is an easy answer to that one. It is illegal for anyone under the age of 16 to be smoking in the province, so we should not be setting aside 25 per cent of the area of the school where you can do what it is illegal for you to do.

Mrs. Cunningham: What about the teachers?

Mr. R. Cunningham: Some school boards have gone the route and some American states have gone the route of including teachers and staff members in the school grounds prohibition. If this committee wanted to go further and include that, super. The priority, in our submission, is students.

Mr. Daigeler: Mrs. Cunningham asked the question I was going to ask. However, I would like to make a statement. I am really surprised. I went to high school in Europe almost 30 years ago, and even at that time there was no smoking in high schools. That does not mean the students did not pick it up anyway, but I am surprised there is smoking in the high schools.

Mr. Chairman: I think we went through a period when smoking was totally banned, and then gradually in the more liberal 1960s—

Mrs. Cunningham: When you and I went 100 years ago, Mr. Neumann, we could not smoke.

Mr. Chairman: —it was allowed on the school property, and then the pendulum swung the other way.

Mr. Kozyra: Having taught at a high school for 24 years prior to this vocation, I saw the extent to which the various school bans on smoking were abused and so on, and to what a great extent students did smoke. I must say I agree with your recommendation 100 per cent.

Mr. Chairman: My observation was that it seemed fairer to the students to have the smoking ban once the ban applied to everyone including staff. It was not only in the building but on the property in Brant county. People who wanted to smoke had to go out to the sidewalk. Teachers stood there along with the students.

Mr. R. Cunningham: There certainly is some merit to that. If I could just reply a bit more to a question you asked earlier about whether a student might want to smoke more. We have spoken with a great number of high school students, and the answers of a grade 9 student I spoke with yesterday, for example, Michael White from Leaside High School in Toronto, were typical of what we have heard. Leaside High School has a complete ban on students smoking on school grounds.

I asked him if he thought it was a good idea that students should be prohibited from smoking on school grounds. His answer was: "I think it's great because of all the new information that's out on secondhand smoking that we're having at school. It would be kind of odd if they said, 'Don't smoke,' and then they allowed it on school property."

I then asked if he thought the students would smoke less when there is a ban on smoking on the school grounds, and he said, "Yes, because some people,



if they were allowed to smoke on school grounds, I am sure people would just do it to try and be cool; you know, peer pressure and everything." That is a typical answer we have heard.

The parliamentary assistant, Barbara Sullivan, mentioned yesterday that when federal public servants could not smoke during a certain period of time during the day, if they did not quit completely, on average their consumption decreased considerably. I think you would find the same thing among students. They just could not smoke for a certain period of time.

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Mr. Sterling: I am sorry I was not here for all your brief. You know where I stand on most of your concerns on this. I think it is interesting you are requesting that the committee amend the present legislation with regard to elementary or secondary schools. I agree with you in terms of a total ban in those areas, but I think the committee should also consider, and I would like to hear your comments on it, dealing with other facilities where children are normally housed; for instance, day care centres. I do not know if you mentioned it in your brief, but the ability of a younger person to assimilate smoke is not as great as an adult's ability to deal with secondhand smoke. I do not know if you considered that at all.

Mr. LeGresley: I think we would be in complete agreement with you there.

Mr. Chairman: Thank you very much for presenting your views to us. The committee is interested in hearing what young people have to say. We wish you every success in your campaign across the province.

The next presentation is from the Ontario Lung Association. Representing that organization will be Dr. J. Stanley Hill, president, and Doris Whiteside, director of public relations. Welcome to the committee. You have one half-hour to make your presentation and you may, at your discretion, leave some of that time for questions from committee members.

#### ONTARIO LUNG ASSOCIATION

Dr. Hill: Let me say first of all what a pleasure it is for us to be here. I want to take this opportunity to thank you for the privilege of presenting the position of the Ontario Lung Association with regard to Bill 194.

Doris Whiteside, who is sitting beside me, is public relations consultant at the provincial office. Also, behind me are Ross Reid, who is our executive director, and two members of the advocacy committee. It happened to coincide with a meeting of that committee this morning. We have Mary Campbell and Brian Stocks.

Let me at the outset commend the government of Ontario for the initiative taken in drafting this legislation. It is in fact, and I quote for a second time this afternoon the Minister of Labour, a "step in the direction of a smoke-free society."

It is not the central thrust of this brief to underscore the fact that tobacco use is recognized as the largest cause of preventable mortality in Canada. I consider, however, that the members of the standing committee on

social development should be reminded of the magnitude of the health problem resulting from cigarette smoking.

According to data of the Department of National Health and Welfare, in the age group 35 to 84 the number of deaths attributable to cigarette smoking was approximately 35,000 in 1985 or 25 per cent of all deaths in this age group. Assuming that tobacco-caused deaths are proportional to consumption patterns, this computes to 12,000 such deaths in Ontario annually or one death every 43 minutes. With your permission, I would like to put that into some kind of perspective.

We were all shocked and saddened last weekend with the news from Hillsborough stadium in Sheffield, England, with regard to the tragedy there. I understand that by today the number of deaths from that terrible event has risen to 95. The statistics I have presented to you with regard to cigarette smoking in Ontario are that the deaths resulting from cigarette smoking amount to 99 every three days but this does not evoke the same horror or shock, and I might ask, why not?

It is against this type of backdrop that we commend the government of Ontario for tabling this legislation. It is, however, the strongly held position of the Ontario Lung Association that the legislation, as it is currently worded, is severely flawed.

I draw the attention of the members to subsection 3(1), "An employer may designate one or more areas in an enclosed workplace as smoking areas," and subsection 3(2), "The total space for designated smoking areas at an enclosed workplace shall not exceed 25 per cent of the total floor area of the enclosed workplace."

I also point out that in the explanatory notes with which we were provided—I direct your attention to number 12—it is indicated that the bill does not require an employer to separately ventilate or provide physical barriers to separate the smoking area from the nonsmoking area.

This part of the act is totally unacceptable to the Ontario Lung Association. All that will happen, given the situation described above, is that the environmental tobacco smoke in the smoking area will be recycled in the normal process of ventilation, heating or air-conditioning and the nonsmoking employees will be exposed to a polluted and, I suggest, unhealthy atmosphere. Environmental tobacco smoke is defined as the mixture of sidestream smoke and exhaled mainstream smoke in an area where smoking has taken place.

In the 1986 United States Surgeon General's report, *The Health Consequences of Involuntary Smoking*, at the end of chapter 3, entitled "Environmental Tobacco: Smoke Chemistry and Exposure of Nonsmokers," it was concluded that:

"The small particle size of environmental tobacco smoke places it in the diffusion-controlled regime of movement in air for deposition and removal mechanisms. Because these submicron particles will follow air streams, convective currents will dominate and the distribution of environmental tobacco smoke will occur rapidly through the volume of a room. As a result, the simple separation of smokers and nonsmokers within the same airspace may reduce, but will not eliminate, exposure to environmental tobacco smoke."

Another of the report's general conclusions is, "Involuntary smoking is

a cause of disease, including lung cancer, in healthy nonsmokers." As members of the committee are, I am sure, aware, the US Surgeon General's annual reports are held in high regard in the research community for their scientific rigour.

I also draw the attention of committee members to the 1982 report of the Task Force on Smoking submitted to the Ontario Council of Health. This report was presented to the then Minister of Health, the Honourable Larry Grossman, in July of that year. In that report, recommendation 3, which dealt with smoking in the workplace, said in part, "It is also recommended that the government specifically provide nonsmoking employees the right by law to apply for and receive, without prejudice, relief from exposure to secondhand smoke in their usual workplace."

It is the position of the Ontario Lung Association that the legislation before you, as it is currently structured, will not provide the type of relief suggested above. The report of the task force goes on to reflect the posture that the public needs to be protected against the health hazards and discomfort associated with exposure to secondhand smoke.

Secondhand smoke is not selective: it adversely affects both the unhealthy and the healthy members of the population. There is ample evidence in the research literature to indicate that although the effect of secondhand smoke upon healthy individuals will not be immediately obvious, other than perhaps some discomfort and irritation, it has an immediate, acute effect upon those suffering from asthma, allergies and chronic obstructive lung disease.

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Surely now is the hour for the government of Ontario to stand up and be counted and to align itself with the majority of the population who are nonsmokers. We estimate that approximately 70 per cent of the Canadian population is in this category.

Again, to cite the task force report, "Clear, strong action by the province is likely to have significant impact upon public attitudes," and further, "an increasingly large majority of the Ontario public—smokers and nonsmokers alike—were in favour of restrictive measures."

The Ontario Lung Association respectfully recommends that the act be amended as follows: that employers be required to physically divide the smoking area from the nonsmoking area and to arrange for separate ventilation of the smoking area to the outside of the building; or that smoking be banned in the workplace completely.

That is the end of my formal presentation.

Mr. Chairman: Thank you very much, Dr. Hill. We will now go to questions from the committee members; thank you for leaving some time for questions. Mr. Allen, would you like to start?

Mr. Allen: I guess the first question, after thanking you for your presentation, is to ask whether it might be better not to pass the bill as it presently stands; say, if it were to be passed unamended. Would that be your opinion? Would it be rather illusory of us to present the legislation as it presently stands as a remedy to anything in the workplace with respect to smoking and its hazards?



Dr. Hill: I would hope that your recommendations, when they go forward to the Legislature, would result in legislation which in fact would restrict very severely smoking in the workplace. As we have indicated, it seems to us, in any case, that if that is the direction the Legislature wishes to go, then it needs to be tightened up, because right now, as it is currently worded, at least to us there are obvious flaws. I would think for this committee perhaps not to make a strong recommendation to the Legislature would be shirking the issue, if you would pardon that expression.

Mr. Chairman: Could I just follow up on that? Because I think you shirked the question to some degree. The question was: If you had to choose between this bill and doing nothing, what would your choice be? I know your preference is to tighten up the bill, but I believe the question was if you had to choose between this bill and doing nothing.

Dr. Hill: Obviously, as I read the bill, it is up to the employer to decide how much, up to 25 per cent, is going to be set aside. Given the involvement of employees and so on, there may well be some workplaces where it is the decision that there shall be no smoking at all, as there are, for example, in London, Ontario, where I am from. Many of the companies have taken the decision to ban smoking completely; the London Free Press building, for example. You drive past it and there is a whole group of people out on the sidewalk. You wonder whether they are on strike or what is the story. Then you recognize the fact that that is where they have to go to have a cigarette.

From that point of view, perhaps it would be beneficial. My choice would be inclined towards passing the bill. As I mentioned in my remarks, there is a spinoff from the government and the Legislature taking some initiative in the area. Obviously, it could be improved upon, but if we were to have the bill as it currently exists, then I think the message would go out to some people, but I think the message could be much clearer.

Mr. Chairman: Okay. I think your position is quite clear. Anyone else?

Mr. Sterling: I would just like to say to you, Dr. Hill, thank you for your support in the past in terms of my involvement in this issue. As you know, I have been at it for over three years now and I finally, I guess, had some influence on this piece of legislation coming forward.

The question my colleague Mr. Allen asked is a difficult one to answer. Some of the other health-related associations are concerned about the fact that if this bill gets passed then the issue is done with and no future government would have to deal with it and therefore we would never have meaningful legislation.

It is a difficult question to answer in terms of the balance between the two. Do you not think that in passing this piece of legislation there would be some problem in the places where the real conflicts will exist because the legislation is so weak to protect the worker, so that by passing it we would in some ways be doing a disservice to those people?

I think the progressive employers, notwithstanding the legislation, are going to take steps to deal with the issue. In terms of reflecting the questions that were put forward by Mr. Allen, I do not know whether you perhaps came to the right conclusion on that issue, but I know how difficult



it is, because we have been fighting so long for this kind of thing. I just would ask you to think about that for a little while.

Dr. Hill: If I could respond: I think there is a philosophical position that often is reflected in the phrase "not to decide is to decide." I think it behooves the government of the day, if it is going to take action, to take strong action, and, as I mentioned, to stand up and be counted. The large majority of the adult population are currently nonsmokers.

Mr. Chairman: Other members of the committee? I do not see any hands, so I want to thank you. Yes, Mr. Allen?

Mr. Allen: When a group comes before us and makes a specific recommendation, not infrequently that does not mean it does not have some further remarks to make with respect to problems in a piece of legislation. You focused on what obviously is going to be the big debating issue around this legislation. But are there other matters in the legislation that are of concern to you that you would want to put before us before you left the witness stand?

Dr. Hill: I did not realize I was on the witness stand, Mr. Chairman.

Mr. Allen: Whatever you want to call it.

Mr. Chairman: It is a friendly meeting.

Mr. Allen: At the friendly table.

Dr. Hill: To be quite honest, we really focused on what we considered to be, from our viewpoint, a glaring flaw. Not being a lawyer, I was impressed by the three younger folks who preceded me, obviously all with an interest in the legal profession if they are not currently involved in the practice of law. There were not any glaring errors that were visible to us. This one, from our vantage point in terms of our mission to deal with respiratory disease and lung disease, was the one which was obviously central to our presentation.

Mr. Sterling: With Bill 3, which was the successor to Bill 70, which was the first bill I brought in on the Non-smokers' Protection Act, one of the clauses which a committee of this Legislature included and accepted was that in certain kinds of institutions there be a ban totally. My concern in drafting Bill 3 was the fact that younger people have less of an ability to deal with smoke than an adult does. In that bill, I said that the exemptions for providing smoking areas do not include a day care centre, nursery school, or an elementary or secondary school to which students have access while students are present in the school, or to a school bus while transporting students.

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You have mentioned in here that your ultimate goal would be to ban smoking totally, but if that is not acceptable, you would support picking out certain segments of our population and totally banning it in those areas; for instance, the three areas I mentioned.

Dr. Hill: I guess one of the questions that arises is with regard to

the whole school environment. My wife happens to be a vice-principal in a high school, so I am somewhat familiar with the debate that has gone on in the school system in London, for example, with regard to a nonsmoking policy.

One of the problems in that area is that if you are going to ban it for the school population, the students, then obviously you have to ban it for the custodial staff, for the secretarial support staff and for teachers also. Given my druthers as a converted sinner in terms of cigarette smoking, I have no problem with a totally nonsmoking environment.

Mrs. Cunningham: Did you hear that, Mr. Miller?

Mr. Miller: I like that phrase, "converted sinner."

Mrs. Cunningham: You got Mr. Miller's ear on that.

Dr. Hill: Obviously, we have to give segments of the working population, be they custodians in a school or be they faculty members at the University of Western Ontario—whomsoever—some opportunity to get their act together in terms of quitting smoking. I would see a ban put in place, but phased in over a period of time with the employer working with the employees to assist them. The Ontario Lung Association, of course, stands ready to provide the kind of assistance that employers might be looking for in terms of smoking cessation programs.

I think it behooves an employer, be it a board of education or be it a small businessman, to work with his employees towards a situation where perhaps three years or five years down the road there is a total ban on cigarette smoking in the workplace.

Mrs. Cunningham: Given some of the committee members on this Task Force on Smoking—to be specific, Dr. Lefcoe—I do not think he would be happy with this legislation at all. On recommendation three, which you refer to, where we are talking about providing nonsmoking employees a right by law to apply for and receive without prejudice relief from exposure to secondhand smoke, if the room is not ventilated what is the point?

Dr. Hill: I think that was one of the points I addressed, that if you do not do two things—physically separate the smoking section, if you will, from the nonsmoking section, and then separately ventilate that to the exterior of the building—it is quite ineffective. If one of the goals of the legislation is to protect the nonsmoking employee from environmental tobacco smoke, as I defined it, then the way the bill is structured just now, it will not do that. It will not protect the nonsmoking employee.

I really think it is something the committee needs to look at very carefully. I appreciate the fact that it is going to be expensive. My Scots Presbyterian grandmother used to say that nothing that is worthwhile is easily obtained. This is a tremendous goal we have that is attainable. I think the Legislature has to bite the bullet in this regard.

Mr. Miller: I think everybody looks at me as one who is promoting smoking and that it is a great thing. I want to assure you that I am not, because I was one who was always protecting my athletic ability and I did not start to smoke until I was about 30. When we were growing up, we used to listen to Wes McKnight, who advertised Bee Hive corn syrup to make an excellent athlete. That has gone by the wayside.

Today if he does not drink a bottle of beer, an athlete is not an athlete. When we went to school, we could not smoke either. We never even thought about it. I have four boys and 13 grandchildren. I do not want them to smoke either, but if they do, I think they have to have the freedom of choice. We have to make people aware.

I guess the question I would like to ask you, Dr. Hill, is whether you have ever prescribed smoking, maybe in a hospital where somebody could not smoke but because of their age or because of their habit, you felt maybe that smoking would be good for them.

Dr. Hill: I should correct an impression that you obviously have. I am not a medical doctor. I have a PhD; I am a health educator. But there are situations in which, to be quite honest with you—I have a mother-in-law, God bless her cotton socks, who is 82 or 83 years of age. Like yourself, she started smoking maybe at 35 or 40 years of age and I would never have suggested to her at age 75 or 80 that she quit, but she has quit.

It would not be something I would prescribe, using the word "prescribe" in the loosest possible way, but she, together with her family physician, came to the understanding that even at that age, it was not in her best interests. She tells me at age 83 that she feels better than she did 25 years ago.

Mr. Miller: I guess the other thing we have to spend a little time on is—my mother happens to be in a nursing home. She is 93. We go in there and there is an old chap who sits at the door and smokes his pipe. He gets a few ashes on the floor, sure, but what else can he do? If he can get some contentment out of it, that gives me a lot of satisfaction; not that he is going to live to be 100, maybe, I do not know.

But the other thing that bothers me is that you mentioned the fact of sitting outside and they are spitting butts out on the street when you go by the London Free Press. I do that as I come over from 801 Bay Street or I stop any place. They are sitting out on the street smoking and flicking the butts out on the street. I have always liked smoke. My dad smoked a cigar on a Sunday afternoon because it was all he could afford when we went for a drive. I loved the smell of that cigar, I like the smell of a cigarette and I like the smell of a pipe.

I do not think it is going to do any harm if you are smoking here and everything is working well in our ventilating system. It is not going to affect me, in my view. But that is only my view and I know I am never going to convince Mr. Sterling.

Mr. Chairman: I think there is a question there.

Mr. Miller: The bill says that you have to smoke outside. Should there not be a place for people who want to smoke, rather than having them sit out on the street? Sure.

Dr. Hill: The first of my recommended amendments is that if there is going to be smoking allowed—the bill says up to 25 per cent of the work area—that area has to be physically separated from the rest of the work area and it has to be separately ventilated because there is all sorts of research evidence to indicate that if you do not physically separate and separately ventilate, then the smokers and the nonsmokers alike are going to be breathing

what is referred to as environmental tobacco smoke. That is not healthy and there is evidence to support that.

Mr. Miller: We have some other information that indicates that there is no conclusive evidence that environmental tobacco smoke constitutes a serious health hazard. That is from the other side of the coin.

I do not want to appear to be taking sides because I do happen to represent a tobacco area. I know those farmers feel like third-class citizens. I do not want them to feel that way because they have done everything that is legal and aboveboard. It is a serious situation as far as their livelihood and their wellbeing is concerned. I am caught between—I do want to represent my riding as strongly as I can.

Dr. Hill: I am extremely sympathetic to your situation vis-à-vis your constituents, but I would suggest that in the Surgeon General's report in 1986—and I would agree with you that there are some ambivalent data in some areas—there is a clear statement that environmental tobacco smoke is the cause of disease, and he specifically mentions lung cancer.

1530

Mr. Chairman: I think that has been an interesting exchange. We do have two minutes left. I thought Mr. Miller was leading up to another question he asked earlier, and I would be interested in your answer to it. The question was, in this room, which is fairly well ventilated, if you had this side smoking and that side nonsmoking, will the smoke from this side bother the people on that side?

Dr. Hill: Sure it will. It may not bother them. If their sensitivity to tobacco smoke is low, in other words, if they are ultrasensitive, then it may bother them, because the irritation and the discomfort is the acute impact. But if you were to go on working in this environment day after day and year after year, then the long-term consequences would be significant, even in a well-ventilated room.

Mr. Chairman: Thank you for answering that question, and thank you for coming before our committee and sharing the thoughts of the Ontario Lung Association.

Dr. Hill: I wish to thank you, sir, for the opportunity.

#### ADDICTION MANAGEMENT SYSTEMS INC.

Mr. Chairman: Our next presentation is from an organization entitled Addiction Management Systems. Representing that organization is Charles Borg. Mr. Borg, welcome to the committee.

Mr. Borg: Mr. Chairman, gentlemen and ladies, you will have to bear with me. I just came from the dentist, so half of my face is frozen.

Mr. Chairman: I experienced that last week, so I know exactly what you are feeling like. Take a seat. I should mention to you that you have one half-hour to make your presentation. You may leave some time for questions within the half-hour at your discretion.

Mr. Borg: I am sure that everyone in front of me and behind me will



cover the health aspects of smoking, so I intend to make this presentation from a strictly practical point of view and talk about what is happening in the smoke-free workplace or in workplaces that are in the process of going smoke-free.

I am Charles Borg. I am the co-founder, shareholder and vice-president of Addiction Management Systems. It is a company that has been set up solely to handle and create systems and programs that will permit employers to effectively deal with the problems and complications arising from the smoke-free workplace preparations, to deal with anticipated new municipal, provincial and federal bylaws and legislation that impacts smoking in the workplace.

Our research began almost six years ago. Initially it resulted in publishing a smoking cessation program called The Last Pack. Two years ago, a formal workplace program was created. It included the best help available for those employees who wanted to quit. It was a smoking cessation program in one sense, but more important, it provided help for the smokers who did not want to quit or did not believe they could. In short, it focused on the majority of smokers who needed the help most, smokers who needed to learn how to adjust to smoking restrictions in the workplace.

Obviously, my presence and submission today is not to espouse the virtues and success of The Last Pack smoking management program. It is simply to share with you our experience and the knowledge we have acquired in aiding more than 100 Canadian companies, large and small, to achieve trouble-free and successful transition to a smoke-free workplace.

The recent municipal legislation in the city of Toronto and the town of Markham focuses on the rights of nonsmokers, their rights to a workplace free of secondhand and sidestream smoke. Obviously, prevailing consideration was given to the rights of the majority of the employees, the nonsmokers.

Conversely, Bill 194, in its present form, is watered down and open-ended. Based on our experience, it will create confusion, arbitration and dissatisfaction on all sides. Unnecessary power struggles, tension among employees, loss of productivity and lowering of morale all result when the less-than-stringent workplace smoking policy is introduced.

The bill in its present form, namely, proposing a 25 per cent floor area designated for smoking, is fraught with countless opportunities for conflict between smokers, nonsmokers and management. A recent case we have encountered and handled ourselves clearly demonstrates the problems ahead for employees if Bill 194 is passed in its present form.

The company I am going to talk about is a large manufacturing facility. It has two unions, with memberships from both office and shop workers. The company has requested our assistance in presenting a proposal to union management. The shop workers could not agree with management as to which area should be designated the 25 per cent smoking area.

Obviously, regrouping workers into smokers and nonsmokers and drawing a white line on the floor as they proposed earlier was not workable, because they had more than 25 per cent smokers. As a final demand, they have proposed several designated smoking areas, because they said, "We are entitled to this within the proposed 25 per cent limit." They said it will be in compliance with the wording of the proposed Bill 194.

In response, we pointed out at the meeting that smoke breaks are quite costly. Two 15-minute smoke breaks a day add up to three weeks of productivity lost per year per smoker. Also, smoke breaks encourage power smoking which negatively affects the health of smokers more than regular smoking. You see smokers puffing outside of buildings literally trying to swallow their cigarettes, they puff so fast, before they enter. There is a tremendous impact on the system.

I am going to talk about it a bit later, but at the second meeting with the second set of union leaders representing office workers, the same problem was identified from a different point of view, namely, that smokers with private offices will have privileges under the new law that smokers without offices will not have. It was immediately pointed out that nonsmokers are acutely aware that smoke from private office smoking is circulated into everyone's air space through the ventilation system.

The point I am trying to make is that what needs to be understood is that a poorly defined law creates new management problems and will not erase the existing ones. Bill 194, in its present form, and we have seen it in work, insinuates the right to smoke in the workplace. That was the biggest surprise we have faced. Actually, it did not happen in just one place but in a number of places, where they said, "Does this mean that now the smokers have rights to smoke in 25 per cent of places regardless?"

Bill 194 in its present form is subject to broad and divergent interpretation that will likely lead to ongoing arbitration. As a result, it has forced a company, our client I was talking about, that had planned on being totally smoke-free, to back off and dramatically soften its new smoking policy.

#### 1540

Bill 194 is supposed to be about the rights and interests of people who work for employers in Ontario: the rights of nonsmokers and the rights of smokers. Let me get to my main point, and that is to talk about what is happening at companies in the process of formulating their policies.

When employers solicit the views of all employees, surprisingly, up to 80 per cent of smokers vote in favour of the smoke-free workplace. However, when employers offer smoking cessation and smoking cessation assistance to smokers, less than 10 per cent of smokers will participate. What is happening? What then have they voted for? They have voted for a rule that will force them to cut back, to smoke less. All smokers want to cut back. More important, they believe that they can.

Interestingly, what we have found is that only about 20 per cent of smokers in the workplace, given the opportunity, will ever declare their intention of quitting; 80 per cent will say, "I don't want to quit." However, when we probe them, "Wouldn't you like to cut down?" the 80 per cent of them say, "Yes, I want to, if there was an easy way, if there was motivation."

Most smokers have tried to quit and have failed. They do not believe they can quit. For most smokers it is not a choice between smoking or quitting. It becomes a choice between smoking and failing to quit. Cutting down, however, is an achievable and realistic goal in the smoker's mind, and this is why they ask for regulations.

Bill 194, in its present form, provides none of the incentives or

regulations that the 80 per cent of smoking employees consistently vote in favour of.

This brings me to my last point. Let me shed light on the addiction itself as it is related to smoking in the workplace. By the way, to qualify my presence here, I used to smoke three and a half packs and I still want to smoke.

The addictive element of the smoking habit is most often cited for the difficulties identified with legislating a total ban on smoking in the workplace. However, smoking is a learned behaviour which can be unlearned. Smoking only becomes addictive when the physiological effect of nicotine is connected to responses to psychological and habitual associations. This connection is established by the frequency of smoking, by the uninhibited ability to reach for a cigarette any time. At the moment, that is what is happening in the workplace.

The psychological and physical habitual associations, because smokers reach for the cigarette automatically without thinking about it, are more powerful than the dependency on nicotine itself. If you eliminate the opportunity to smoke frequently, the association, the physiological, psychological and habitual associations, will weaken and smoking can be replaced—unlearned.

Even heavy smokers state, when they are surveyed, that they do not enjoy more than two to five cigarettes a day. I have not met one smoker yet who stated differently. So when smoking is turned into a conscious action, the number of cigarettes can be greatly reduced within a short period of adjustment. It usually takes 21 days, with no or minimal withdrawal symptoms.

While most smokers state that they do not want to quit and do not believe they can, virtually all smokers want to cut down. Quitting smoking or cutting down effectively is a matter of motivation and skills. The motivation can only be provided to most smokers as a result of smoke-free workplace legislation.

Most smokers would not even try to do anything or even rethink their habit unless the motivation is provided via those restrictions. Consequently, with those regulations, a smoke-free workplace is a realistic goal. It has been and continues to be successfully achieved by an ever-growing number of informed employers.

The objective of a smoking policy is not to make people stop smoking. It is simply to make them refrain from doing it at work. The decision regarding quitting or controlling the habit must be left to the individual smoker.

Bill 194, in its final form, should not only become a means of ensuring a smoke-free work environment for nonsmokers; it should also acknowledge the need for and provide the external motivation and regulations so overwhelmingly favoured by the majority of smokers.

There is a realistic opportunity for the proposed bill to encourage employees to view a total ban as the optimal goal in fulfilling their social responsibility. The minimal conditions for this, on the other hand, are to ensure the smoking restrictions equally apply to all smokers at the company, and to define designated smoking areas as physically separated and separately ventilated. Short of these, a total ban should be recommended. In essence, we



have to ensure that the final bill assists the employer in creating an environment that serves everyone's interest.

Mr. Chairman: Did you say your organization is a business? Are you a consultant?

Mr. Borg: It is a private corporation. We are acting as business consultants in helping companies create smoking policies. We provide a method of implementing the smoke-free workplace, and we provide the vehicle, through our last-pack smoking control program, so that all smokers can learn how not to smoke at work.

Mr. Chairman: How will this bill affect demand for your services?

Mr. Borg: It does not because as you have put it, progressive employers are doing it anyway. We have put over 100 companies through this program over the last year. If there is legislation, obviously the legislation is a catalyst for others trying to think about the problem.

Mr. Sterling: I was most interested in your presentation because this is a fairly new area of workplace condition, in that your company is only six years old, which is almost embryonic. I was interested in your remarks with regard to how an employer views this piece of legislation, or you view it, as a smokers' rights bill versus the other.

In terms of your experience, and Mr. Miller has been somewhat concerned or has asked some questions with regard to ventilation systems, with these 100 employers or whatever, are most ventilation systems that are in place now adequate so that I could work in close proximity to a smoker if I were a nonsmoker? Are ventilation systems good enough now as they exist in buildings?

Mr. Borg: Definitely not. In order to create the proper ventilation or adequate ventilation, the capacity has to increase fivefold.

Mr. Sterling: Fivefold?

Mr. Borg: Yes.

Mr. Sterling: As I understand it, the normal rate of exchange used to be somewhere around 10 per cent fresh air coming into the system. Some buildings are now shooting for about 20 per cent.

Mr. Borg: I am not an engineer. I can only speak from experience. For example, at Consilium Place out in Scarborough, where most workplaces were smoke-free and smoking was allowed in common areas, now the total building has gone smoke-free because the ventilation system could not take the overload. It is that simple. I do not think the present systems are adequate to provide smoke-free work environments.

Mr. Kozyra: I am certainly not an expert on addictions, but I got from your comments that there was some difference in smoke addiction, we would call it, as opposed to, say, drugs or alcohol, in that it offered, perhaps for those who wished a smoker to reduce, some hope. I understood from your comments that it could be influenced positively more readily, although you did not mention the other two addictions. Is that correct or is there a difference?

Mr. Borg: There is a difference in that smoking is a habitual, psychological and physiological dependency. The addictive element is the



nicotine. Also, what makes nicotine become addictive is the frequency of drug-taking. There is no other drug-taking that is as frequent as cigarette smoking. A one-pack-a-day smoker puffs 100,000 times a year. You do not shoot up 100,000 times a year and you do not drink 100,000 glasses a year. Consequently, if you take those three elements apart and handle them one by one and eliminate some of the conditions that encourage that frequency, that can be helpful.

Mr. Kozyra: So that is the reason. The employer's stand on it can reduce the frequency and therefore it makes it easier to break the habit, so to speak.

Mr. Borg: That is correct.

The Acting Chairman (Mr. Kanter): Are there any further questions of this witness? If there are no further questions, I would like to thank Mr. Borg, although I heard only part of his information. We have your information. We got it previously this morning in our kits.

We are running a little early, but perhaps I could ask if there is someone here from the Allergy Information Association. I have Susan Daglish down to speak. Is she here at this time?

I understand the next group is here. Would it perhaps be suitable to hear from them first? Then we could hear from the Allergy Information Association a little later. Is that agreeable? I know some members may want to attend the Lieutenant Governor's event later this afternoon. Do we have unanimous agreement to hear the Ontario Flue-Cured Tobacco Growers' Marketing Board delegation next?

The Acting Chairman: Hearing no objections, we will ask to hear from representatives of that group. I have Albert Bouw listed as vice-chairman. Please take your seats, gentlemen or ladies, whoever is representing the board, and perhaps identify yourselves. We have half an hour for your deputation. Presumably, if you do not take the entire half an hour for your presentation, members of the committee may have questions. If you have any written material, the clerk will distribute it.

Mr. Bouw: What should I do with the material?

The Acting Chairman: The clerk is just going to come to get that and he will distribute it to all members.

#### ONTARIO FLUE-CURED TOBACCO GROWERS' MARKETING BOARD

Mr. Bouw: I am Albert Bouw, vice-chairman of the Ontario Flue-Cured Tobacco Growers' Marketing Board.

Mr. Csubak: I am Joe Csubak, director, the marketing board.

The Acting Chairman: Please proceed. Your material will be distributed.

Mr. Bouw: I would just like to comment that I enjoy more than five cigarettes per day. I just happened to overhear that from the previous speaker. Mr. Sterling remembers our name, I am sure.

We have prepared very briefly our views on this particular proposed

bill. We have visited some of you, and others, over the past year, including various members of this government. We have basically structured our concerns in point form, so it is very direct and very clear what our concerns are. I will just go through them point by point. I would be glad to expand on each point and answer questions after that.

Smoking in the workplace—regulatory consideration: We have four general principles: one, keeping regulatory intervention to a minimum, which is very self-explanatory; two, seeking consensus to promote harmony. That particular statement is a mouthful in itself. For clarification, what we refer to there is that there is communication within a particular office, factory or work environment among the people who work there on whatever issue, that, three, the parameters should be fair and practical and should accommodate both the smoker and the nonsmoker because, as four says, accommodate smokers as well as nonsmokers.

This is something that is new that has come up as far as regulation in a workplace is concerned. To a degree we do not have a big problem with that, but at the same time we believe people who want to smoke should be allowed to do that.

Under the proposed guidelines, "Employers, and where applicable, unions should be encouraged to develop mechanisms to regularly monitor overall air quality in the workplace..." We do not pretend to be experts in air quality or air systems. In the documentation we have provided, there has been some work done on that over the last few years. In fact, in one particular area it shows that only four per cent of the pollutants in the air are from cigarette smoke. Unfortunately, the four per cent is the only four per cent you can see. Tobacco smoke you can see. In this particular room we are in, I see no tobacco smoke, but there are other pollutants in the air according to the studies and the information we have handed to you.

"Requirement to have a written policy on smoking in the workplace derived through the democratic process." This is something very disturbing to us, some of the feedback. Different organizations are calling us and they do not know where to turn. We have teachers, nurses and other professional people calling our offices because they do not know where to get advice. We have difficulty in advising them as well. Again, if there are 30 people working in a room and one of those people objects to tobacco smoke, it almost seems that one person now has control over the other 29, so it is not very democratic and we still do live in a democratic province and country.

"Smoking to be prohibited in confined public places, e.g. elevators." We agree with that and we think that is right.

"Employers and employees should be encouraged to seek a consensus on smoking rules for common work areas such as conference rooms." I think, again, that is very straightforward and self-explanatory. If there is consensus within this room here not to or to, we agree with that. We support that. Both sides of the coin should be raised.

"Smoking in private offices should be at the discretion of the occupant." They are not bothering anybody else except maybe a fly or so.

"Common areas such as cafeterias, lounges and reception areas should have designated smoking and nonsmoking areas." I think we are seeing that and that should continue.

The last item we have disturbs us very much. We have received some calls where people are being discriminated against as far as job employment is concerned. I would think there are a lot of other issues determining whether you hire someone to do a job, and if we have now become so discriminatory that if I am a smoker, I am not qualified to be Premier of this province, or whatever else—

Mr. Kanter: It has happened from time to time. It is not the situation at the present time, but it has happened from time to time that a smoker has been the Premier.

Mr. Bouw: I just thought it fit.

Mr. Kanter: I just thought I would show we were listening.

Mr. Bouw: It does disturb us that we are getting these types of phone calls from people. Again, they are not tobacco farmers; they are professional people or people who are looking for nontobacco related work, and they do not know where to turn. As I have indicated, we have had schoolteachers and nurses, and they do not know where to turn for advice and to get help, because all of a sudden now they have to go out on the sidewalk or they have to go in some closet.

1600

Ladies and gentlemen, I think we all know that if you make something too restrictive, the tendency is to find a way around it, to abuse it. I think we are saying that, yes, if there were consensus within an organization, office or factory through the democratic system, we would support that, but the rule that one person out of 30 rules is very discriminatory and against all beliefs in this country. We would no longer have a democratic society. I do not think we are being hard in our views as far as this issue is concerned. I think we want to co-operate in every way possible, but at the same time I do not think the smoker should be overregulated and prejudiced.

Mr. Miller: I want to say thanks to Mr. Bouw and Mr. Csubak for coming down today on behalf of the Ontario Flue-Cured Tobacco Growers' Marketing Board. I did not believe you were going to make a presentation, until you were able to make that arrangement. I feel it is important in our democratic system to have opportunities to have input into a bill that is going to affect everyone in Ontario, and the industry as a whole. I just wanted to make those comments. Members should feel free to ask questions and understand what we are trying to do here.

Mr. Sterling: I would like to ask some questions that do not relate directly to what you have said, because I understand that. In terms of your marketing board and what is going on in the tobacco industry, because you are probably the guys who know best, has the consumption of total tobacco leaf in the business you are in actually gone down in Ontario and Canada over the last three years?

Mr. Bouw: Yes, it has.

Mr. Sterling: By how much? I am not talking about what you are selling.

Mr. Bouw: No, I am talking about consumption: sticks, pieces.

Mr. Sterling: Yes.

Mr. Bouw: It was 2.5 per cent last year. I believe it was 3.5 per cent the previous year and about the same the year before that. If you start adding all those together, it has quite an effect.

Mr. Sterling: Has your share of the domestic market dropped by just those percentages or has it dropped more than that?

Mr. Bouw: You have to understand our system a little bit, the way in which tobacco was purchased from growers by the trade pre-1985. We had a system called "allocation." It was an agreement. Whether the manufacturer wanted a particular pile of tobacco or not, if a particular pile of tobacco did not bring a price or a bid on the auction system, it was allocated to that particular company based on its market share. We had that system for several years and we, as farmers, liked it very much.

As a result of that, they built up surplus stocks, to the tune of some 319 million pounds in 1985. Consumption is something less than 100 million pounds. Because of these surplus stocks, our production did go down for several years for domestic consumption. In the last two years, and I assume this is where your question is coming from, it has changed a little bit. It has strengthened a little bit because now those available stocks for this country are depleted.

Mr. Sterling: How much is being imported into our country from outside the country?

Mr. Bouw: Between three million and five million pounds.

Mr. Sterling: So it is 3 per cent to 5 per cent of the market?

Mr. Bouw: Yes.

Mr. Sterling: As I understand it, it is very difficult for a producer in Ontario or Canada to compete against the price of that. Is that correct?

Mr. Csubak: Some of it is specialty tobaccos that are brought in.

Mr. Sterling: I see.

Mr. Csubak: Tobaccos that we do not produce. Some of it is similar, but others are entirely different. But no, those ranges of tobacco we can compete with.

Mr. Sterling: So consumption now is at about 100 million pounds.

Mr. Csubak: Roughly.

Mr. Sterling: What are you allocating? Are the growers growing 100 million pounds, or are they growing more than that now?

Mr. Csubak: We are growing more than that, including the export, and this year we are aiming for a target of 152 million pounds. You see, to get back to what Al had started on, with the surplus stocks, there was an adjustment made in 1986 when our production dropped down to 110 million pounds, including the exports. This helped relieve the surplus situation that



existed. We, as a board, I believe, exported somewhere in the neighbourhood of 70 million to 80 million pounds.

Mr. Bouw: In total.

Mr. Csubak: In total. That helped bring their company stocks into line with consumption; that is, they got their stocks down to the level they wanted to carry them at. Therefore, last year it levelled out at 142, and with a bit of increased export and a little increased demand by one particular company, we jumped to 152.

I would say that even the trade is considering this another adjustment year; that is, they have their stocks a little bit lower than they wanted. This is the year they are making their adjustment. Next year, the anticipation is it will be dropping back to 142 million.

Mr. Sterling: What is the present status in terms of the storage that is there? It was 319,000?

Mr. Bouw: Million.

Mr. Csubak: Was.

Mr. Sterling: Was 319, whatever it was. What is it at now?

Mr. Bouw: It is about 235. You have to understand the system: You have to age tobacco for two years, so that if you purchase a crop and you have stock, you are looking at about an 18-month supply you need for the system.

Mr. Sterling: How much are we exporting from Canada now?

Mr. Bouw: About 40 per cent.

Mr. Sterling: About 40 per cent. So if the domestic consumption is 100, 140 is about where it is and the export market, as I have been reading recently, is growing at this time. Is that correct?

Mr. Bouw: There is an overall world stock shortage; that is correct.

Mr. Sterling: In terms of tobacco producers leaving the business, I think the federal government and the provincial government have programs at the present time: the Redux program?

Mr. Bouw: Yes.

Mr. Sterling: Can you inform me a little about what is happening there?

Mr. Bouw: The program, since this is the third year, has taken out about 500 producers. The program ran out of moneys the last year. It was a three-year program but the moneys were used in two. A new program was initiated this year, which just started a week ago Monday; 197 producers have applied to exit through this particular program for this year. There are still approximately 500 people on a waiting list—whether they all choose to exit or not, we do not know—who will have to wait another year or two years because of the funds. There are only so many funds set aside per year.

Mr. Sterling: As I understand, there is a quota in terms of your own quota to grow so many acres of tobacco.

Mr. Bouw: Yes.

Mr. Sterling: At the present time, if I own a quota to grow 40 acres of tobacco, can I grow 40 acres, or how many acres can I grow?

Mr. Csubak: You can grow 42.5 per cent this year.

Mr. Sterling: A little less than half of it.

Mr. Sterling: So basically, these people exiting will allow the present growers to become more efficient and get a little larger piece of the pie.

Mr. Bouw: Yes, it does increase. The base has changed from 384 million to 360 and whatever this program will take out now; probably another 15 million to 20 million, so we will be down to about 340 base. We allocate marketing quota out of the base.

Mr. Sterling: Yes. Okay.

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Mr. Csubak: By the way, just for a bit of clarification, the active producer in Ontario has not received any aid in the form of tobacco aid in any way, shape or form. Our only benefit is as active producers. The aid has gone to the people who are leaving the industry. The only aid we can get out of it, eventually, is by reducing the amount of base, with each one of the active growers being able to grow slightly more of his own quota. That is our only benefit out of this Redux program. The people exiting the industry are getting the benefit out of it, but the active producer is not.

Mr. Sterling: Is the Redux program attractive enough to get producers out? Obviously if there are 500 on the waiting list, it seems like it is attractive.

Mr. Csubak: I would not call it attractive. I think probably the best way to explain that is that every time you turn around and gain a little hope—For example, last spring the budget came out with a tax increase of 30 cents a pack and a depression came over the tobacco belt. It was just about impossible to imagine what happened there. This is where the people are just so fed up that no matter how they try to rearrange things and try to meet their commitments, government action is killing us. It is making it virtually impossible for a man with some debt to go ahead and carry on.

This stuff here, like this particular Bill 194—Where do we draw the line? There are a lot of things in there that are supposed to be based on facts. I think if you read through some of that stuff that was presented to you, you will find that some of it is based on pretty flimsy facts, particularly environmental tobacco smoke, secondhand smoke or whatever you want to call it. That is very flimsy. To go ahead and condemn an industry, what have we gained? We had one of the best agricultural industries going in Canada. The whole area has been devastated and what has been gained?

If anybody in this room feels that smoking is going to be stamped out, I think we all know better than that. You can reduce it, yes, but you are not

going to stamp it out. In the meantime you have caused complete chaos to an industry that was completely self-sustaining and was not a problem to anyone. Then all of a sudden, bang. We really question why this has to be. And the health issue I do not buy; I am sorry.

Mr. Chairman: Are there any other questions from members of the committee? Gentlemen, I want to thank you for coming and sharing your views with us. You bring a certain perspective to the committee which will help us in deliberating on this bill and I thank you for making the effort to come down here.

Mr. Bouw: Thank you for taking the time to hear us.

Mr. Chairman: Our last presentation today will be from the Allergy Information Association. Representing that organization is Susan Daglish. Welcome to the committee. You have one half-hour for your presentation and you may reserve some of that time for questions from committee members, at your discretion.

#### ALLERGY INFORMATION ASSOCIATION

Mrs. Daglish: I want to thank you very much for letting me come to this meeting, because I did want to go on record as a representative of the Allergy Information Association, which is the largest lay organization for allergy sufferers in Canada with over 4,000 members. We receive inquiries from about 14,000-15,000 allergy sufferers each year. The latest estimates we want you to know of regarding the incidence of allergy in the population is about 25 per cent of the population, so we do have a large constituency, a large number of people who have a problem with allergies.

Tobacco is especially a concern to allergic people because physiologically, everyone's lung goes into a bit of spasm when it is in contact with a noxious substance such as tobacco smoke or certain of the pollutants. The issue is that if you are a normal person with healthy lungs, you do not even realize that your lung has had this spasm. However, an allergic person has very, very sensitive lungs because of his disease, and whenever he is in contact with something such as tobacco smoke he has a reaction.

They have exactly the same set of symptoms they would have if they were having an allergy attack, so that if they have the most common of the allergic diseases, rhinitis, they would have the runny eyes, the runny nose, the sneezing. If they have asthma as an allergic disease, they would have difficulty breathing.

Therefore, allergic people have a special problem when faced with tobacco. A lot of them try very hard to find a place where there is a no-smoking policy and they can accept a job, and that, of course, obviously limits them very severely in the choice of jobs. Because of their severe allergies, they are barred from many kinds of jobs. For instance, they would not be very good as a bartender. So they really have a limiting on their jobs.

The people who do accept jobs and take them, very often are very ill with their allergies and so are not very efficient while they are on the job, simply because they are being exposed to tobacco smoke.

Finally, I think some of them who are very disabled by their allergies actually have to leave their positions and accept disability pensions. That is

a great drain, I believe, on our system: that people who are in actuality able must leave and seek social assistance because they are exposed to tobacco in the workplace.

I feel very strongly that if we could have a totally smoke-free working area we would be much enriched by that 25 per cent of the population who are affected. They could do much more for us.

I have been in restaurants where the restaurants have been designated as one third smoke-free, and what I find is that the table I am at is smoke-free but the one next to me is smoking and the one next to me is smoking and therefore I cannot eat. I have to say to the management: "I'm sorry. I know I may have ordered my meal, but I can't stay here in this smoky environment where I'm not getting a smoke-free environment," and I leave.

A person who has a job is not really in quite that position. In other words, if you are going to have it smoke-free, even if you are going to allow some smoking on the premises, a couple of things have to happen. One thing is that the smoking must be confined to an area where it can be vented outside. There is no point in having smoking in a room where it keeps being recirculated, where it can affect people.

A lot of companies make a choice where they say, "Okay, we are going to have smoking in the cafeteria." I submit that is rather unfair to the people who cannot be in a smoky environment. Where do they eat their lunch? Where do they go for their recreation? At this point they have to stay at their desks.

My plea is: I think a smoke-free environment will be very beneficial to the economy, but it has to be a truly smoke-free environment. I just wanted to make these few brief remarks to go on record that the Allergy Information Association would very much applaud the opportunity to have a smoke-free Ontario workplace.

I understand that you may have some questions for me and I will be very willing to do my best to answer them.

Mr. Chairman: Okay. Thank you for your presentation. Did you say that 25 per cent of the population suffers from some kind of allergy? Is all of that 25 per cent people who would react to cigarette smoke?

Mrs. Daglish: Yes.

Mr. Chairman: Have you had some of your members actually have to quit jobs because of this?

1620

Mrs. Daglish: Yes.

Mr. Chairman: What numbers are we talking about?

Mrs. Daglish: You understand that allergy ranges in severity from mild, which people can treat by avoiding their allergen or just taking simple over-the-counter medications, to life-threatening reactions. Yes, we have had members who have told us that they have had to leave their job and go on disability pension because they cannot find a job that is smoke-free. I have



never done a statistical questionnaire of our members to ask how many, but I am always most surprised at how many we do have in this position.

Mr. Kozyra: This is not meant to minimize your concern or the general concern about smoke in the workplace, but the previous group gave us information. One of the memos focused on what it felt was a much greater concern, and that is ventilation in general. I just want your comments as to whether your group works along these lines as well, because they indicated that, "In a study of 27 million square feet of office work/space, the company determined that contaminants in the air consisted of: fungi (31 per cent), bacteria (nine per cent), fibreglass (six per cent), environmental tobacco smoke (four per cent)." Their picture is that there are things that are at least far more bountiful in the air we breathe and so on. Does your group actively pursue this aspect as well or are you focusing on environmental smoke?

Mrs. Daglish: Yes. What I would say to that is that obviously the cleaner the atmosphere the better; certainly we are all aware of the problems of the tight building syndrome. It seems to me that if there is something in the air that does not have to be there as a part of the workaday environment, then why introduce it? If you could clean up that air by four per cent, you are still gaining.

Mr. Kozyra: Except I am wondering if they are triggering us to a much bigger problem. I know the impact of what a total revamping of our entire ventilation approach would cost, but perhaps in a way, and I do not concur with their other opinions and so on about smoking, they are really showing us a much bigger problem and perhaps the solution to it.

Mr. Sterling: Could I comment on that?

Mr. Chairman: I would like to hear Mrs. Daglish's comments first. Do you have any reaction on Mr. Kozyra's last comment?

Mrs. Daglish: I do not think we are asking for revamping by banning smoking in the workplace.

Mr. Kozyra: No, I realize that. I was not suggesting that.

Mrs. Daglish: It just seems to me that is a really simple way to improve the air quality.

Mr. Kozyra: I was looking at this as the tip of the iceberg and maybe we are missing the iceberg.

Mrs. Daglish: There is no question that there are very, very polluted buildings because of the effort to save fuel, and certainly our ventilation systems have not kept pace with our effort to seal our buildings. There are pollutants in these buildings. Tobacco is definitely one of them and it does not need to be.

Mr. Sterling: I want to comment on this particular point, because I think it has been brought up by a number of people who are perhaps giving less importance to the problem of secondhand smoke in the workplace. What I find consistent through the approach is that they average out the secondhand smoke. What in fact happens, as you know if you have been in an office, etc., is that the concentration is very great in a specific part and for a specific point of

time. It is not anything like four percent; it is probably like 99 percent at that particular moment when the person is forced to sit beside the next person.

The other part that is important to note, and Dr. Andrew Pipe, who is president or chairman of the Physicians for a Smoke-Free Canada, pointed this out to the committee on Bill 71, is that cigarette smoke itself has about 50 different chemical substances in it, some of which are very toxic. It is not only quantity that you are dealing with; you are also dealing with the toxicity of the matter that you are talking about.

I cannot comment, but several of those are carcinogenic and within the cigarette smoke. This morning Mr. Bédard talked about a survey of buildings in Ottawa and said that cigarette smoke only accounted for a small percentage overall in the 30 buildings. What he failed to mention was that if you are sitting next to a smoker, that was not a small percentage of the air.

I think that is where we can get off the track in terms of the total percentages. It is not a situation where you are dealing with a whole building where all the air is homogeneous; it is nothing like that. There are concentrations of this thing all over the place.

Mrs. Daglish: I think also the important aspect of the figures you gave us is the fact that it is not a momentary impact on the system too; it is something that stays in the air, which makes it very unhealthy.

Mr. Allen: Excuse me for not having been here for most of your presentation. I had a very pressing telephone call that I could only make at that time.

Somewhat along the same vein: Having had to deal in my own city with a closed-air building, namely, a detention centre, which has multiple air contaminants in it, among them a very heavy contribution of smoke from the inmates, it certainly has become plain to me that the general point that is being made by people who make the observations referred to is fair enough: first, there are major problems with ventilation systems; second, there are especially major problems in enclosed buildings; but third, there is also a whole series of airborne chemicals, fungi, dust, you name it, that can contribute to the major problem that people feel in those buildings.

Does it strike you as strange as it strikes me that what is put up as the problem, isolating cigarette smoke, is to name another problem that needs to be addressed, and therefore avoids the whole issue, namely, that one should be moving across the whole front of these problems? The objection that is made is not an objection to cigarette smoke or to the means of removing it or inhibiting its presence in an enclosed area and, therefore, the objection is entirely beside the point.

When one piles up another problem against a problem you already have, as though somehow that relieves you of the burden of addressing that problem, that is a strange way to approach the issue, do you not think? That surely must be one that I think persons concerned with allergy confront all the time.

Mrs. Daglish: It is. There are a lot of allergens, and I am sure that there is one of those fallacies of reasoning that I took in my philosophy class many years ago. I take your point and I think that you are quite right. I do not think that we should cloud the issue of tobacco smoke by worrying about some of these other allergens at this meeting.

Mr. Chairman: Mrs. Daglish, thank you for making your presentation to us. Would you like to make any concluding remarks before you leave? You have not used all your half-hour, and that is why I am asking.

Mrs. Daglish: I can see that. No, I just feel that I hope very strongly that there could be legislation passed that would truly make a smoke-free environment for workers. I think it is going to pay dividends in the long run for all concerned.

Mr. Chairman: Thank you for bringing the perspective of your association to the attention of this committee.

Mrs. Daglish: Thank you for having me on such short notice. I appreciate it.

Mr. Chairman: Members of the committee, that concludes our presentations for today. Our meeting tomorrow will begin at 10 a.m.

1630

Mr. Sterling: Just before we adjourn, I was not here at 10 o'clock this morning and am unaware of the reasons why the parliamentary assistant is not here. I am aware of why the minister is not here. Are we going to have a political representative of the Ministry of Labour here tomorrow?

I think it is only fair to those people who are making submissions that, in fact, they be assured that the Minister of Labour or his parliamentary assistant is going to hear those presentations. I do not think it is proper that we continue on with these hearings unless we have that participation.

Mr. Chairman: I do not have an answer to that, other than the fact that you said you know where the minister is. The parliamentary assistant, as I understand—

Mr. Sterling: The minister is sick, and I accept that as an excuse.

Mr. Chairman: The parliamentary assistant is with the standing committee on resources development, I believe. Mr. Daigeler, do you have an explanation?

Mr. Daigeler: Yes, it is unfortunate the way some of the committees do get scheduled but, as you know, the resources committee, which presently is dealing with a bill from the Ministry of Labour, is also holding hearings. I am informed that the parliamentary assistant is at those hearings in Oshawa.

Mr. Sterling: It is pretty hard to shut hearings down. I do not know whether they are having public hearings or not. Are they?

Mr. Daigeler: Yes. As you know, it is a very controversial bill as well.

Mr. Kanter: I have some sympathy for Mr. Sterling's point. I think that it is an unusual and really unforeseen circumstance where the minister is indeed ill and his particular ministry has two pieces of legislation with public hearings the very same week.

This morning, you will recall, there was a situation where there also seemed to be some technical questions. Arrangements have been made. Staff



either were here at the time or I know have been following the committee hearings the rest of the day and are on deck should there be any technical questions.

I think your concern about ministry representatives is well taken. Certainly, as an individual member of the committee, I will try to see that we have political representation here, if possible, and certainly, if possible, for the clause-by-clause hearing. It is really only due to unforeseen circumstances of illness that such has not been the case so far.

Mr. Sterling: I accept that fact. I had not realized the resources committee was there. But we are faced with a problem. We are supposed to have clause-by-clause consideration of this bill later on in the week. Obviously, from a number of the presentations we have heard, members of the public who have presented their case want serious consideration given to amendments.

I do not know how the people who are going to make the decision are going to be able to make that decision, unless they get a copy of Hansard and read Hansard before we have that clause-by-clause discussion.

Mr. Chairman: I do not know if this will allay your concerns at all, but I should mention that as far as the committee is concerned, we have had our researcher here take notes. The researcher will compile all of the recommendations that have come out of all the presentations, whether they are verbal or written.

We have had a gentleman at the back there who is representing the ministry who has been taking notes as well, to take back to the minister's office. There has not been any gap in terms of the flow of information back. I agree with you that it is unfortunate that we did not have the parliamentary assistant with us today.

Mr. Daigeler: I understand that she will be back on Thursday.

Mr. Chairman: For clause-by-clause.

Mr. Sterling: I think we are going to have to decide whether we are going to do clause-by-clause this week, because I am not hopeful that we are going to get changes to the bill when, in fact, the person who is charged with making the ultimate decision—Mrs. Sullivan, by her minister—has not heard what people are saying about it.

I am a little concerned. I do not think we can shut down the hearings at this stage because we already have the people coming in, but perhaps we might want to consider putting off clause-by-clause until the House gets back.

Mr. Chairman: I think we should proceed with meeting on Thursday. The committee can certainly discuss whether or not to proceed, but I think we should conclude the hearings tomorrow.

Mr. Sterling: Fortunately, as you know, they are televised proceedings. I would prefer it if Mrs. Sullivan had an opportunity to review those tapes before we went to the clause-by-clause. I do not know if that is going to be possible.

Mr. Chairman: We have allowed, as you know, Thursday morning to be completely clear to allow people to meet in caucus if they wish to prepare



amendments and to get ready for clause-by-clause in the afternoon. That was deliberately done by the subcommittee.

Tomorrow is pretty full with hearings, so we really will not have time to discuss the very important point you raise. That is why I am suggesting that should be the first item on the agenda Thursday.

Mr. Sterling: One of the problems that we will be faced with will be because the minister is sick at this time. I understand that and we have to accommodate that, understandably. Normally when a bill like this comes on and there is some room or some overwhelming desire, as I read it, for some amendments to some parts of it, I want it to get a fair shake when we come to the clause-by-clause.

Everything I have read from the government members of this committee is that they are quite open-minded to looking at reasonable amendments to the legislation. But if in fact the minister has to give the parliamentary assistant her marching orders on Wednesday night or Thursday at noon, the easiest order to give, I submit, is to stick by the bill. Therefore, notwithstanding my great desire to have this bill dealt with and to become legislation, I want it to have a fair break.

I want to say that before we get to the situation where we are trying to push through something on Thursday afternoon or Friday morning, you may find me on my legs at that point in time making the same arguments, if Mrs. Sullivan has not had a proper opportunity to consult with her members, perhaps to view the tapes and to consult at some length with the minister, if that is possible at this time.

Mr. Chairman: As I mentioned, I think you are raising a good point. You indicated the open-mindedness of the committee and I share that view. What I am asking you to do is keep an open mind on the issue you raised until we hear from Mrs. Sullivan on Thursday, and then we can make our judgement at that time. We would discuss that issue before proceeding with the clause-by-clause.

Mr. Kanter: Could I clarify the procedure on Thursday? Tomorrow, I understand, we have deputations all day. Thursday morning we are not scheduled to meet, are we?

Mr. Chairman: We have left Thursday morning clear to allow time for party groups to caucus if they wish, for amendments to be prepared, to get ready for dealing with clause-by-clause.

Mr. Kanter: So the next session of the committee after tomorrow will be Thursday afternoon at two o'clock, correct?

Mr. Chairman: Two o'clock, yes.

Mr. Kanter: Fine. I appreciate that.

Mr. Sterling: What did you say? Your next what?

Mr. Chairman: After tomorrow the next scheduled time is Thursday at two.

Mr. Sterling: The committee has to be struck again when the new parliament meets, does it not, before we can meet?

Mr. Chairman: Yes, that is true.

Mr. Sterling: So we may not be able to meet on Thursday and we would be striking the committee—

Mr. Chairman: No, Thursday of this week.

Mr. Sterling: Oh, Thursday of this week, sorry.

Mr. Chairman: Mr. Daigeler, did you have a comment?

Mr. Daigeler: It probably would be helpful for the parliamentary assistant as well, if the opposition has specific amendments that it has in mind, to ensure that they are given to the government as soon as possible.

Mr. Kanter: There is actually a rule to the effect that they are supposed to be in two hours before clause-by-clause if possible, or something like that. I think Mr. Daigeler is right.

Mr. Sterling: I think normally you wait until you hear the evidence before you take a position.

Mr. Kanter: I was not necessarily suggesting you do them tomorrow, just before the clause-by-clause.

Mr. Allen: With regard to the further disposition of this bill, is it the intent of the committee to complete clause-by-clause and that this then be reported to the House as a completed bill and there will be no further opportunity for amendments in committee of the whole House or in any respect in the Legislature?

Mr. Chairman: The hope was that the bill would be completed on Thursday and Friday morning if necessary and reported to the House. Whether or not there is further opportunity through clause-by-clause review of the committee of the whole I do not think is a decision of this committee. It is up to the House leaders to make that determination.

Mr. Sterling: Any member can stop it at that stage and force it.

Mr. Chairman: Yes, so that is a further opportunity for amendments.

Mr. Sterling: But that is unlikely to happen.

Mr. Allen: I do want to underline Mr. Sterling's concern. It is quite an unacceptable procedure for a committee to continue to treat a piece of legislation without the appropriate politically responsible party—ministry in this case—being present in committee.

Not only as we go through clause-by-clause, but I think with respect to hearings as a whole, there are often points that arise that need not only reference to somebody who has some technical capacity from the ministry, but also somebody who has the political competence to speak for the reasons the bill is as it is. It really does shortchange the committee not to have that

kind of presence right throughout. It makes for a truncated kind of hearing and a truncated consideration of a piece of legislation.

I just want to add my own concern to Mr. Sterling's that we are in fact proceeding in any respect under these circumstances.

Mr. Chairman: I appreciate the co-operation of the committee and we will convey to Mrs. Sullivan the fact that you value her presence highly at the committee and that it is important for her to be here.

Mr. Sterling: I understand why she is not here. It is an impossible situation that has arisen. I am not blaming either the minister for being sick or her for being in the other place. I am just saying that we may have to alter our process in order to give this bill a fair hearing.

Mr. Chairman: You have served notice of that. As I mentioned, it will be the first item on the agenda on Thursday for discussion.

The committee adjourned at 4:42 p.m.





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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

SMOKING IN THE WORKPLACE ACT

WEDNESDAY, APRIL 19, 1989

Morning Sitting



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Neumann, David E. (Brantford L)

VICE-CHAIRMAN: O'Neill, Yvonne (Ottawa-Rideau L)

Allen, Richard (Hamilton West NDP)

Beer, Charles (York North L)

Carrothers, Douglas A. (Oakville South L)

Cunningham, Dianne E. (London North PC)

Daigeler, Hans (Nepean L)

Jackson, Cameron (Burlington South PC)

Johnston, Richard F. (Scarborough West NDP)

Owen, Bruce (Simcoe Centre L)

Poole, Dianne (Eglinton L)

Substitutions:

Black, Kenneth H. (Muskoka-Georgian Bay L) for Mr. Carrothers

Kanter, Ron (St. Andrew-St. Patrick L) for Ms. Poole

Kozyra, Taras B. (Port Arthur L) for Mrs. O'Neill

Miller, Gordon I. (Norfolk L) for Mr. Beer

Sterling, Norman W. (Carleton PC) for Mr. Jackson

Clerk: Decker, Todd

Staff:

Nishi, Victor, Research Officer, Legislative Research Service

Witnesses:

From the Ontario Mining Association:

Reid, T. Patrick, President

Blogg, John, Manager, Industrial Relations

From the Canadian Cancer Society, Ontario Division:

Ronson, John, Chairman, Public Issues Committee

From the National Cancer Institute of Canada:

Howe, Dr. Geoffrey, Director, Epidemiology Unit

From the Canadian Council on Smoking and Health:

Kyle, Ken, Chairperson, Legislative Committee

Humphries, Carole, Co-ordinator, Workplace Education Service, Canadian Cancer Society, Ontario Division

Dachuk, Cindy, Employee Relations Consultant, Cyanamid Canada Inc.

Mackenzie, Murray, Vice-President, Mount Sinai Hospital

From the Halton Regional Health Department:

Kisby, Merle, Smoking Prevention Co-ordinator

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Wednesday, April 19, 1989

The committee met at 10:08 a.m. in room 151.

SMOKING IN THE WORKPLACE ACT  
(continued)

Consideration of Bill 194, An Act to restrict Smoking in Workplaces.

Mr. Chairman: The meeting will come to order. Members of the committee, this is a meeting of the standing committee on social development called to consider Bill 194, An Act to Restrict Smoking in Workplaces. Our day will be completely filled with presentations, receiving advice and input from various organizations.

The first organization before us is the Ontario Mining Association. Representing that organization is John Blogg. Which one is John?

Mr. Reid: I am Patrick Reid. I am the president of the Ontario Mining Association.

Mr. Chairman: Okay. Will you be making the presentation?

Mr. Reid: I am going to say a few introductory words and then Mr. Blogg will carry on.

Mr. Chairman: The time available to you is one half-hour. You may divide that time as you see fit between presentation and questions from committee members.

ONTARIO MINING ASSOCIATION

Mr. Reid: Ladies yet to come and gentlemen, it is a pleasure to be back here in this particular room, albeit at the other end of the table. We are here on behalf of the Ontario Mining Association and its member companies to support Bill 194.

I should perhaps say at the outset that one sometimes thinks individual members of the Legislature do not have very much influence on events, but I think that to some extent this bill is here because of the efforts of Mr. Sterling who had introduced a private member's bill three years ago. You are doing better with this one, Mr. Sterling, than you did with freedom of information.

There are those who have asked why the Ontario mining industry would be particularly interested in this bill. I think that as you hear our presentation, which Mr. Blogg will give you, you will have a fairly good idea of why we are concerned. Smoking has been identified for some time as hazardous to one's health. We have numerous studies in the mining industry that indicate that the synergy between the environment in some of our mines and smoking can lead to lung cancer and other respiratory diseases.

The mining association pressed the former Minister of Labour some two or

three years ago to bring in some kind of restrictions on smoking. Frankly, that did not get so far at that time. I might add that in pursuing the initiative of having some kind of legislation, I spoke to a gentleman in the Ministry of Health to whom I had been referred by the Ministry of Labour, and in all my years at the Legislature, inside and out, I had never heard such gobbledegook as to why nothing was being done.

As I say, we have a great concern. We have tried to institute in our mines a nonsmoking policy. I might tell you that we have been less than happy with the response of organized labour in supporting us on this initiative. We do believe that to restrict or eliminate smoking altogether is probably the most important thing people can do to ensure their own occupational health.

In a meeting we had with the Ministry of Labour and the mining industry concerning occupational health and safety issues this matter of nonsmoking in the mines was raised, and the response of the local union official was that while he personally found smoking abhorrent he was not going to restrict the individual rights of his members to do so. We note that while individual rights may or may not be a concern, certainly the individual rights of other people who are affected by secondhand smoke are also affected.

With that, I would like to turn it over to Mr. Blogg who is indicating, I think, that I have covered all of his points. He has all the details with regard to some of the studies that have been done and I would like to let Mr. Blogg take it from there.

Mr. Blogg: Just in case he missed something, I am going to read the two pages we have prepared for you.

Mr. Reid: I think I already did. We support the bill.

Mr. Blogg: That is right. The Ontario Mining Association is pleased to have this opportunity to comment on Bill 194, An Act to Restrict Smoking in Workplaces.

The mining industry has for some time been concerned about the health effects of smoking in the workplaces of our industry. On March 10, 1987, the Ontario Mining Association in a letter to the then Minister of Labour, William Wrye, requested the minister to take a leadership role and support a nonsmoking campaign in the mining industry.

Many studies have been completed which associate lung cancer with asbestos, silica, uranium, coal and gold mining methods. However, it should be noted that the two most recent investigations into the causes of death by cancer of uranium and gold miners found that 71 of the 72 uranium miners who died of cancer were heavy smokers and that 108 of the 117 gold miners who died were heavy smokers.

The studies concluded that even though there was increased exposure of both uranium and gold miners to occupationally induced cancer, the fact that they were smokers substantially increased their risk of contracting lung cancer to the point of being contributory to their deaths. In fact, Dr. Jan Muller, author of A Study of Mortality of Ontario Miners, stated on page 2 of that report, "As expected, cigarette smoke was by far the most important cause of lung cancer in gold miners."

We have all heard the American statistics which state that more people die from the effects of smoking each year than the total of American



casualties in the Second World War and Vietnam or the yearly equivalent of the deaths from the crash of a Boeing 747 every four days.

The Surgeon General of the United States, in his 1985 report entitled *The Health Consequences of Smoking: Cancer and Chronic Lung Disease in the Workplace*, stated that the major conclusion of his report was clear: "For the majority of American workers, cigarette smoking represents a greater cause of death and disability than their workplace environment." He further stated, "In those worksites where well-established disease outcomes occur, smoking control and reduction in exposure to hazardous agents are effective, compatible and occasionally synergistic approaches to the reduction of disease risk for the individual worker."

The Ontario Mining Association received a promise from Mr. Wrye, the Minister of Labour in 1987, for ministerial action against smoking in Ontario's workplaces. We trust that the labour movement in Ontario will support this piece of legislation which addresses what has been proven to be the major contributing factor to cancer in humans. The elimination of smoking in workplaces, where we now know statistically that the majority of workers are nonsmokers, is a major step forward in protecting the health of Ontario's workers, both smokers and nonsmokers.

For several years smoking has been prohibited in the uranium mines of Ontario. Today most of our members have smoking policies in place which prohibit smoking underground in mines. Bill 194, if passed, will ensure that all Ontario's miners have at least a reduced risk of cancer by having them cut back on the amount of smoking they do during the workday. More important, passing of the bill will provide the growing numbers of nonsmoking Ontario workers with the clean, smoke-free air they rightfully deserve at their workplaces.

Mr. Chairman, the Ontario Mining Association urges you and your committee to recommend the passing of Bill 194 as quickly as possible so that all Ontarians may benefit with longer, healthier and happier lives free from the pain and suffering associated with cigarette-induced cancer. We have asked for the support of organized labour and government in the past and not received it. Ontario needs Bill 194. We would like to close with the following statement from the World Health Organization:

"Smoking-related diseases are such important causes of disability and premature death in developed countries that the control of cigarette smoking could do more to improve and prolong life in these countries than any single action in the whole field of preventative medicine."

That is it. Thank you very much.

Mr. Allen: I would like to welcome Mr. Reid back to these precincts. It is good to see former members--

Mr. Reid: Who are alive.

Mr. Allen: --involved in public affairs in their own continuing ways and to have them here to make representations before us and having to bring their colleagues with them to buttress their presentations.

First, I am personally pleased that the Ontario Mining Association has declared itself in favour of the legislation, although having heard some of the testimony with respect to the problems that reside in the designated

workplace definitions and the lack of a requirement of separately ventilated designated smoking areas and so on, one has some questions as to how effective this legislation really will be.

Clearly, in an area such as uranium mining where smoking has been prohibited, as you indicate, the bill really in effect has no impact; that already has been done. Could I ask you, though, with respect to your next statement, "Today most of our members have smoking policies in place which prohibit smoking underground in mines," what would the proportion be? Are there still significant numbers or does "most" mean almost all? Do you have numbers on that for us?

1020

Mr. Reid: We have 48 member companies and they are primarily all producing mines. Some of them have more than one mine. I would say the proportion is about 75 per cent, which would cover approximately 24,000 workers in the mines and in the mills. I have to be frank that those which do not have run into some resistance from the representatives of labour, who say they are not going to either support this or tell their members to comply. That is why we think it is such a generic bill which is a little vague in spots about workplaces and ventilation and so on, but at least it provides the thrust of the Legislature and the will of the people that this happen. I would say it is probably about three quarters to 80 per cent that are covered.

There are practical problems. If you pass a law that is not enforceable, you may be doing a complete disservice. People in the mines tend to work in shafts in which they only see supervision every couple of hours or there are places to sneak around and smoke. We are concerned about underground fires from cigarette butts being thrown around and that sort of thing. So we have been trying to ease ourselves into this, and this will give us all an impetus to proceed.

Mr. Allen: So you would indicate or imply in your response that if it were to come to a matter of applying the 25 per cent smoking rule in mining operations and there were no predisposition by the industry to move in this direction, anyway—totally—as so many have, it would be a very difficult bill for even the mining industry to apply?

Mr. Reid: I think that is the reality. Our operations are, not all of them but most of them, underground. We have miles of underground and you have two people working in this area and two people over there. It is going to be extremely difficult to police, but I think the moral suasion of the bill and the authority of the Legislature and the public will is going to say to those people: "Look. This is not acceptable."

It is going to be very difficult to police or regulate in our mines, but we can now all have a policy of no smoking in the mines, or "If you are going to smoke, this is the designated place"; we have ventilation in mines, by the way. Enforcement will be difficult. It is like almost all occupational health and safety regulations: 99 per cent have to be operated on the basis of good will, trust and individual responsibility or it is not going to work.

Mr. Blogg: On that last point, I have talked to some labour relations people with a few of our member firms who have their own smoking policy. They have had a number of conversations with their unions since the institution of their policy. They say there are no problems at all, that the unions in those mines are co-operating very well; which makes it, I think, as

Patrick has said, a lot easier for the companies to do what they should do.

Mr. Allen: I just want to add to that that it is a matter of public record that the Ontario Federation of Labour does support this legislation. We do have in our kits a brief to that effect: that some of the reservations in the past that tend to still hang around this question do have to do with the readiness of some employers to look to this as a sort of individual, personally controlled kind of exercise which may well contrast rather sharply with their inaction in some other respects with regard to health and safety matters in the workplace. I am not saying that with respect to the mining association, but that that psychology has hung over this issue from the labour movement. We do have a quite clear official position taken by the major labour body in this province supporting this legislation at this time.

Mr. Reid: I think it is fair to say that the public at large has come to understand—I think we all knew for a long time but have come to understand—the effects of cigarette smoking. There has been a tremendous swelling of support just in the last two or three years on this. We have a "no smoking" policy in our office. Most offices that I have been in have.

I think, with respect, having sat where you people are all sitting, you cannot be too far ahead of public opinion. Public opinion has now either caught up or passed on this particular issue. We were not talking about it two years ago when some were pressing for it. I think everybody has now seen the light, so to speak.

Mr. Sterling: It is interesting that in your brief, you quote the World Health Organization as your last parting shot. It is interesting to note that that statement was made in 1975 by the World Health Organization. Following along in your remarks, it shows in fact how behind we are in following the health community in taking some real action. This is almost some 14 or 15 years after the time when the World Health Organization recognized that this is what legislators could do in a preventive way to help our people.

One of the witnesses yesterday, who has been a consultant in implementing smoking policies for employers who have done it on a voluntary basis across the province, looked at this bill in a different light. He said to us that it is almost a smokers' rights bill. Because of the inherent weaknesses that are in the wording of the bill, in that it says that up to 25 per cent of an ill-defined area can be designated as a smoking area and that it does not give the nonsmoker a right, in regard to his environment, to really take the employer, the union and everybody to task in order to ensure that he has this, is there a danger that this is going to change the circumstance and weaken the position of progressive mining operations that are heading towards a very constructive policy in terms of health?

I might add that the witness also said that in one of the cases, after Bill 94, the employer was forced to weaken his nonsmoking policy because of the bill, and that was kind of interesting.

Mr. Blogg: There is always a chance of things being weakened, but I suspect that, through regulation, you could tighten up on anything, once you get the bill in place. It is like safety legislation or any type of legislation: you get it in place, you see how it works and then you tighten it up if you have to.

I am not convinced that it is necessarily going to cause employers to weaken their smoking policies. I think my experience with the inspectorate in



health and safety, for example, is that if you have a company policy that exceeds the legislation, the legislation is a minimum. They will enforce whatever the company policy is. I would have problems with an employer who weakens his policy, because the act is a minimum, not the maximum, and any inspectorate should be enforcing the maximum, not the minimum standard.

Mr. Sterling: What I envisage in certain operations, which has actually happened in city hall in the city of Ottawa, is that the union has taken the right to smoke on the job as a benefit—odd as that would sound—and in its collective agreement is negotiating the ability of employees to smoke while they are working.

Mr. Reid: They are not as progressive as the mining industry, obviously.

Mr. Blogg: That would just get right back to what Patrick said. Where there are problems, there seem to have been problems with not getting that kind of union support, based on the medical facts of the hazards of smoking in the workplace. I know the Ontario Federation of Labour supports nonsmoking provisions with some strength in them. I would think that a union that would want to negotiate smoking rights in a collective agreement would not be progressive and would probably be outside of the mainstream of the union movement.

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Mr. Sterling: I think it would be and I think the mainstream of the union movement is very progressive in terms of looking at the health of its workers. Notwithstanding that, I guess my concern is with Bill 94. Does it shove it back into that kind of push-pull and confrontation, which is not resolved in the legislation? That is why I think we would prefer a stronger bill whereby, notwithstanding what the push-pull was in the large part, the individual worker would be assured that he could work in a smoke-free environment.

Mr. Reid: I will go back to my antecedents and answer you this way. When most of our mines started, we asked the lung and cancer people to come in and speak to the employees and to provide us with material. I think that, regardless of the evidence that is there, a lot of people are not yet convinced that smoking is hazardous to themselves or to those in the immediate vicinity.

Mr. Sterling: We heard that yesterday.

Mr. Reid: I hate to say education is the panacea, but I really think you have to do an education program to convince people of it.

Mr. Chairman: Hearings like this help, as previous hearings have helped to widen the knowledge of the public. Would any other committee members like to ask questions?

Mr. Allen: It is not normal to ask another committee member a question, but I wonder if Mr. Sterling could give us any further details about the incident in Ottawa that he is referring to. Was it an attempt to negotiate designated, separately ventilated smoking locations in the workplace or was it just the general right to smoke on the job in the open workplace itself?

Mr. Sterling: I think it was the former in terms of getting smoking



areas. If I can recall, and unfortunately I skimmed the article and I hate to give the history, I think the cost was something like \$180,000 that it was going to cost the taxpayers in order to provide a smoking area and then, of course, it became a political issue thereafter. Mrs. Cunningham indicates that the same situation is true in her area in London in regard to, I believe, the school boards, is it?

Mrs. Cunningham: This is a discussion during negotiations, because many teacher federations are very concerned that the areas that are set aside for smoking inside buildings should be ventilated. They are pushing for that. They are trying to set a good example within the law and a good example as mature adults who understand all the facts and issues that the place be ventilated. To set aside a smoking area, with students involved—they know a lot more than that, and that is not protecting their health at all.

I suppose that is why we are pushing on the question, because you are not fooling anybody any more. Nobody wants to sit in a room where there is smoke, even if a quarter of it is set aside as a smoking area. Who likes to eat in a restaurant like that? That is the problem. That is why we are asking the questions.

Mr. Chairman, could I ask a question that has specifically to do with mining?

Mr. Chairman: Sure.

Mrs. Cunningham: I am just curious.

Mr. Chairman: As it relates to this bill?

Mrs. Cunningham: Yes. It is actually related to what was stated here.

Do you say no smoking in shafts? I mean, you do not allow people to smoke and you were just really telling us that sometimes that is hard to police.

Mr. Reid: A shaft is up and down; it is a vertical. You cannot smoke when you are going up and down in the cage, but you were allowed—and some people still do, I presume—to smoke in the drifts. I would not have been able to tell you this—when did I leave, Gordon, in 1984?—but a drift is a horizontal where the working part is, where the miners work in the horizontal parts. Some of them still smoke, and even in those that have "no smoking" policies, I am sure there are probably some people down there who are still smoking in the drifts.

Mrs. Cunningham: That is why the legislation specifically says "shaft." According to this legislation, that is one place where they shall not smoke.

Mr. Blogg: That is right.

Mr. Reid: Yes.

Mrs. Cunningham: And that helps you a lot.

Mr. Reid: Yes.

Mr. Chairman: If the bill were amended, as some delegations have suggested to us, to prohibit smoking totally in all workplaces, unless it is in a separately ventilated area, how would your association react to that?

Mr. Reid: We would support that strongly. We believe, as we stated, that there is no other single thing that will be of more benefit to individuals' health than to stop smoking.

Mr. Blogg: I know we are over. I just want to make this comment. You may be aware of the fact that the gold mining study said the gold mining process was a cause of cancer.

As I stated in the presentation, 108 of those people were heavy smokers. The cost of that in compensation to the industry is \$30 million. There is no discount for the fact that smoking was the major contributing factor. So if you can get smoking out of the workplace—on another level, health, safety and workers' compensation costs, which you know are going up the roof—you are going to get cutbacks on those costs, because the compensation system is that you either pay or do not pay.

There is no discounting whether a person has cancer. If it is related to work, it is related to work. If we can get smoking out, then we are more assured of the fact that the cause of cancer is the workplace and there is no possible contributing factor that can cloud the issue.

Mr. Chairman: Thank you.

Mr. Miller: I am pleased to see my former colleague and member of the Legislature so adamant regarding tobacco. When he was a member, he used to bum and borrow.

Mr. Reid: That was my final line.

Mr. Miller: However, I was also interested in his comments, to support somewhat the fact that tobacco is a legal product and it is legal to smoke. There are some other things that are illegal and not hounded quite as much as I feel they should be.

I guess the question is, do the ones who want to smoke—and I am not against controlling, and there is the health aspect of it. Certainly nobody can be opposed to improving a smoker's health, but there is not a lot of evidence that indicates that secondhand smoke is harmful to his neighbour. The Smokers' Freedom Society made a presentation to us indicating that there is no evidence to support that. Even if you smoked in this room here today, so long as there was proper ventilation, working properly, it should not really bother your neighbour.

That is the last thing I would want to see. If somebody is adamant that he does not want to, then I think that should be protected, but again, what do you think of the freedom of smokers and the freedom of rights?

Mr. Reid: There were studies of the health effects of involuntary exposure to tobacco smoke put out by the Ontario Ministry of Labour in June 1985.

We can all talk about personal experiences. Somebody who is quite close to me never smoked in her life. Her husband was a two- or three-pack-a-day man. She has just found out recently that she has what can be termed smoker's cough. She never smoked in her life, but they used to travel by car a lot. I was in the car, and he smoked a lot.

One could draw analogies. We do not allow certain things, like garbage

lying in your backyard, because it is unsightly, the smell and everything else. It is a human hazard, but it is also something that impinges on my enjoyment. I have never been to an Alcoholics Anonymous meeting, but let me try: I used to be a smoker. As a matter of fact, I did not start smoking until I had been in this place 10 years, so I recommend you all quit before 10 years is up.

One of the reasons I did quit when I left was that Gordie and David Peterson, who was then smoking, and others were not around to bum cigarettes from. But I quit two and a half years ago and I can tell the difference when I am in a room now where a lot of people are smoking. I can tell in my breathing. I can tell in the smell on my clothes and, frankly, I find it offensive. There is nothing worse, as you know, than a convert.

Mr. Chairman: Thank you. I am afraid the time has elapsed. We thank you very much for coming and making the presentation to us.

Mr. Reid: Thank you.

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Mr. Chairman: Our next presentation is from the Canadian Cancer Society. While they are making their way forward, I will mention the names I have on my agenda: John Ronson, chairman, public issues committee, Canadian Cancer Society, and Dr. Geoffrey Howe, director of the National Cancer Institute of Canada, epidemiology unit. Welcome to the committee, gentlemen. You have half an hour for your presentation. You may reserve some time for questions, at your discretion.

#### CANADIAN CANCER SOCIETY, ONTARIO DIVISION

Mr. Ronson: Thank you. We will try to reserve some time for questions.

My name is John Ronson. I am chairman of the public issues committee of the Ontario division of the Canadian Cancer Society. With me today is Dr. Geoffrey Howe, who is the director of the epidemiology unit of the National Cancer Institute and a professor in the department of preventive medicine and biostatistics at the University of Toronto.

The Canadian Cancer Society is Ontario's largest health charity. We represent approximately 150,000 volunteers reaching out to several hundred units, urban and rural, across the province. Funds being raised by our canvassers this month not only support research studies but also assist with a wide spectrum of services to help people both during and after treatment for cancer and provide a wide range of public education programs, all at virtually no cost to the government.

We are all aware that there are various interests represented by groups and individuals appearing before this committee. Many of those opposed to Bill 194 have vested financial interests in the impact of this legislation. I can say unequivocally that the only interest of the Canadian Cancer Society in this debate is the health of the people of Ontario.

Cancer is second only to heart disease as the leading cause of death in Ontario. It is a frightening, devastating and often lethal disease. Many of you, as I have, have seen the death of a family member, close relative or friend from cancer in one of its many forms.



We now know that many cancers are preventable. Take lung cancer, for example. Last year thousands of Canadians died of this horrible disease. If you get it, your chances of surviving five years are about 10 per cent.

What are the leading causes of lung cancer in Canada? In descending order, they are Players, Export A, DuMaurier, Rothmans and Craven A. These, of course, are the five best-selling cigarette brands in Canada, and smoking, the experts tell us, causes about 85 per cent of all lung cancers. That amounted to over 11,000 deaths last year in Canada alone, and all of them were potentially preventable. This figure is solely for lung cancer. Add to it the death and disability from smoking-related heart disease, lung disease and other cancers, and the tobacco industry easily earns the title as "public health enemy number one."

More than 17 years ago, after the first extensive investigation of this industry by an all-party committee, the federal House of Commons concluded:

"There is no longer any scientific controversy regarding the risk created by cigarette smoking. The original statistical observations have been validated by clinical observation and the evidence is now accepted as fact by Canadian medicine."

A recent study has shown that after the implementation of a smoke-free policy in federal government workplaces, one out of seven smokers quit smoking and those who continued smoking smoked fewer cigarettes per day. No wonder the tobacco industry is in opposition to the legislation before us today.

We must face the facts squarely. There is conclusive scientific evidence showing that nonsmokers are harmed by exposure to secondhand smoke. Studies have now definitively shown that nonsmokers with smoking spouses have higher rates of lung cancer than do nonsmokers who live smoke-free. The implications in the workplace are obvious since, when you allow for hours spent sleeping, many workers spend even more time in a smoke-filled work environment than they might in a smoke-filled home. Indeed, recent estimates indicate that about 330 lung cancer deaths in Canada in 1985 were from workplace exposure to tobacco smoke.

The Canadian Cancer Society believes government policy must reflect changing public attitudes about the social acceptability of smoking. In 1986, our survey found that 91 per cent of Canadians believe they have a right to air free of smoke. While 81 per cent of Canadians believe people should be allowed to smoke if they want to, they also feel very strongly that they should not infringe upon the health of nonsmokers. While some nonsmokers believe the health hazards of secondhand smoke may be exaggerated, the vast majority are not of this opinion, reflecting their very real concern about their health risks. A growing majority of Canadians now supports restricting smoking in the workplace.

The Canadian Cancer Society supports the general thrust of the proposed legislation. We are pleased Ontario will become the first province to regulate, in a general way, smoking in the workplace. We are also encouraged that the bill presumes workplaces will be smoke-free. Nevertheless, we are greatly concerned that the purpose of this legislation appears to be only the laying out of a foundation upon which individual workplaces could erect their own smoking policies. The government must do more than this.

We believe the government of Ontario has a responsibility to ensure that the working people of this province are not subjected on a regular basis to



life-threatening carcinogens in the air they breathe. There is a real opportunity here for leadership by this committee and I am sure you share my view that health is not a partisan issue.

At this point, to help you understand the basis for the suggestions we make to improve the bill, I will pose several questions and give you our answers.

Does cigarette smoking by one employee affect other employees in the company?

Yes. Involuntary smokers may suffer breathing capacity impairment equal to that of light smokers smoking one to 10 cigarettes daily.

Can we really believe that just breathing air with cigarette smoke in it is even close to the health hazard of primary smoking?

The temperature of a cigarette that is sitting in an ashtray is much lower than the temperature at the end of a cigarette when someone takes a drag on the cigarette. Consequently, the combustion of the tobacco products is far less complete and the smoke therefore contains far more chemical byproducts of incomplete combustion. In some respects, it is more hazardous than the smoke the smoker draws into his or her lungs. Individuals who work in a smoky environment can go home every day with levels of nicotine and other compounds in their blood, urine, sweat, saliva and breast milk that approximate smoking between one to 10 cigarettes a day.

Does this bill, if unamended, make good business sense?

No. Unless it is amended, it will not increase productivity, reduce accidents or reduce time off for smoking-related illnesses. We just heard from the mining people about that exact question. They would certainly support our position, as I understood their testimony.

Is public health the only loser if this bill passes unamended?

No. Property damage and depreciation often result from cigarette burns to fixtures and furniture. Cigarette smoke produces an oily film that can impair the performance of sensitive instruments and machines. The painting of interior surfaces is increased since the wall finish fades as a result of the residue of tobacco smoke. Less material and manpower is required to clean and maintain an area in which no one smokes as opposed to a smoking area of equal size. In fact, some companies find routine cleaning can be reduced by as much as 60 per cent.

Is not tobacco smoke hanging in the air actually a sign of poor ventilation?

Ventilation systems are designed primarily to preserve energy, not to preserve indoor air quality. It would cost an estimated many thousands of dollars per smoker to reduce environmental tobacco smoke to the level that is acceptable for other environmental pollutants.

Is the answer not contained in this bill, that is to say, segregating the smokers from nonsmokers or creating special smoking areas?

No. Ventilation systems cannot ensure clean air in segregated smoking areas, unless of course the ventilation is to the outside. Simply separating

smokers and nonsmokers may actually increase the health risk to nonsmokers because the farther away they are from the source of the smoke, the more likely they are to tolerate it and ultimately to suffer the health consequences.

Do we know all there is to know about smoking at the present time?

No. More and more studies are showing the harmful effects of cigarette smoking and the exposure to passive smoke by nonsmokers. A new study has just been completed in the United States showing that exposure to passive smoke is a risk factor in cervical cancer. The study also showed that the risk from passive smoking was even greater in women who were not smokers than in women who smoked. This is a growing concern as more women enter the labour force.

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Then what must be done?

The Ontario government's own surveys show that the majority of smokers would like to quit. I suggest it is a vast majority. Many smokers respond positively to nonsmoking policies.

We believe the Ontario government took a major positive step forward with the decision by Management Board and cabinet to institute a smoke-free workplace for all Ontario government workers. The stated aim of this policy was that with the co-operation of smokers and nonsmokers alike, this new policy would bring about a cleaner, healthier, more pleasant work environment for everyone in the public service.

We believe it is incumbent upon the government of Ontario to ensure that all workers in Ontario have the same benefits of government policy as public servants.

The main problem with the bill is found in subsection 3(2). This is the part of the legislation most in need of amendment. Not defining what constitutes a "designated smoking area" could render this legislation worthless. The lack of any explanation of the meaning of this term means that the smoking areas an employer can set up might not be separately ventilated, might not be an enclosed space and could include areas occupied by nonsmokers. As such, there is nothing to ensure that a reluctant employer has to prevent employees from breathing in carcinogens. In fact, an employer could follow the advice of the tobacco industry and designate a small area around each smoker as a smoking area. A Mack truck could go through that loophole.

I think, as Mr. Sterling pointed out—I did not hear the presentation yesterday he referred to—the current legislation really could be interpreted, if an employer and employees chose to do so, as a smokers' rights piece of legislation unless it is amended.

The health community helped the federal government with the problem of defining a "designated smoking area" in the federal Non-smokers' Health Act. Using the definitions from the federal legislation, we would suggest that subsection 3(1) be improved to use the exact term "designated smoking area" as it is used in subsection 3(2), and then we would add the following definition of the term:

"'designated smoking area' means an enclosed area set aside for smokers to use tobacco, which is clearly identified as such, does not include an area

normally occupied by nonsmokers and is independently ventilated to the out-of-doors."

We do not want to get into a numbers game by debating the percentage of the total floor area of an enclosed workplace that could be designated as a smoking area. This legislation should reflect the true effects on health of the tobacco epidemic. The Canadian Cancer Society believes there are only two valid options: The first would be to ban all smoking from all workplaces in Ontario, or second, to provide externally ventilated smoking lounges for those who wish to smoke in those workplaces that do not have a completely smoke-free policy.

We would even be prepared to consider a phased-in definition of a "designated smoking area" where, for the first few months, such lounges are not to be ventilated outdoors. Certainly, there should be provincial laws stating that in all new construction in Ontario, buildings should have externally ventilated smoking areas, if the government should decide smoking is to be permitted.

We have other suggestions for amendment of the bill as follows:

Clause 2(2)(b): This clause takes out of the purview of this act areas used for serving the public. We feel the clause should be amended to make it clear that it refers only to areas actually used for serving the public.

Section 8 should also be amended. While some may feel that minimum fines may be adequate for the enforcement of this type of legislation, the suggested fine levels are too low. This is particularly true in the case of an employer who refuses to comply with an order from an inspector. A higher level of fines for offences by employers should be spelled out in the act.

Section 10 of the proposed bill deals with municipal workplace smoking bylaws. The strong preference of the Canadian Cancer Society is for good, province-wide legislation. Smoking in the workplace is best not left to local regulation.

However, if Bill 194 is not strengthened as it should be, then municipalities should have the power to enact strong local bylaws. Provisions similar to those contained in Mr. Sterling's private member's bill, Bill 157, should then be introduced into this legislation.

The Canadian Cancer Society, Ontario Division has had some experience in helping corporations in Ontario become smoke-free. You will be hearing something about that experience in the next presentation. These employers have told us that a complete smoking ban is far easier to implement and enforce. They have also said that morale between smokers and nonsmokers has improved and productivity has increased. As the policy was equal for all, there was no more pitting one against another and smoking privileges did not depend upon your position within the company. We do not know of one single company which, once it went smoke-free, reverted and became a smoking company.

We also have some further suggestions for strengthening the legislation. We believe it is time for the provincial government to take a strong leadership role on the issue of workplace smoking. What we need are province-wide standards that are tough but fair. In particular, the province should show leadership by prohibiting smoking in day care centres, schools or on school or day care grounds entirely. Few people start to smoke after the age of 13 or 14, or certainly in their teens. Accordingly, it is important that potential role models such as day care leaders and teachers set a good example.



In addition, the current practice of many hospitals that prohibit smoking entirely should be extended to all hospitals across the province, except perhaps to chronic care areas of hospitals where hospital patients are permanently hospitalized and independently ventilated designated smoking areas are be allowed. That could presumably be prescribed by regulation. Smoking on enclosed municipal transit vehicles should also be prohibited and restaurants should be required by law to set aside a nonsmoking area of at least 50 per cent of the seating area of the restaurant.

In conclusion, I would say that the case for strong legislation to control smoking in the workplace has been set out in some detail in the World Health Organization Expert Committee Report entitled Controlling the Smoking Epidemic.

The report notes, "Governments around the world have accepted the responsibility to protect public health, sometimes (as with legislation on vaccination, quarantine, the involuntary commitment of mental patients under certain conditions, and the wearing of seatbelts in cars) with measures that infringe the liberty of the individual far more than those commonly recommended to curb smoking."

As amended, Bill 194 would give Ontario a unique opportunity to control the breathing of a deadly product and show leadership to other regions and provinces in Canada.

I will conclude with the words of the former British Health minister, Sir George Young: "The solution to many of today's medical problems will not be found in the research laboratories but in our parliaments. For the prospective patient the answer may not be cure by incision at the operating table but prevention by decision at the cabinet table."

Thank you very much for this opportunity to address the committee. Dr. Howe or I will be pleased to take any questions.

Mr. Chairman: You have 10 minutes for questions. First of all, Mr. Kanter.

Mr. Kanter: There was a lot of useful information contained in your brief. I want to focus on what you are concerned about in terms of the definition sections of the bill. I might say your example of an employer who might designate a small area around each smoker as a smoking area might perhaps be a little extreme and unreasonable, but I do want to focus on your suggested changes.

On the bottom of page 10, you list four items that you would like to see included in the bill in terms of definition. I am particularly interested in your phrase that, "'designated smoking area'...does not include an area normally occupied by nonsmokers." I wonder if you could give me the rationale for that proposed change. I understand it is in the federal legislation and I am not sure if the federal legislation is in effect yet. I know it has been passed, but I wonder if you could describe how you would see that as working, how that would change the bill substantially from the way it now reads.

Mr. Ronson: Yes, I would be pleased to. For your information, the Federal Non-smokers' Health Act is not in effect yet. It has of course been passed. I think the reason for those words is that it really does close a loophole in a sense. If there were an enclosed office that happened to be shared by two people, for example, and one was a smoker and one was not a



smoker and that happened to be a designated smoking area, this provision of the bill would not allow that area to be designated as a smoking area. Does that answer your question?

Mr. Kanter: I think it answers the question. Let's suppose there is some change of employees, a shifting or reallocation or things like that. If this were included, or I guess, the way it is going to work in the federal legislation, presumably if the situation changed and two smokers occupied the same office, there would be no difficulty in having that designated a smoking area if both people in the office happened to be smokers.

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Mr. Ronson: Under this definition, if the area was independently ventilated, that is correct.

Mr. Kanter: As I recall, in the federal legislation the independent ventilation is only for buildings constructed after a certain date. It does not call for a complete retrofit of all workplaces, as I recall the federal legislation.

Mr. Ronson: I am not positive, but I believe that is correct.

Mr. Kanter: I can appreciate that what you are doing is trying to get the best of all possible worlds. You have put three or four different—Let me just pursue that on one of the other aspects. You have talked about clearly identifying designated smoking areas. Could you enlarge on why you see that as important. It may be obvious, but it might be useful to enlighten members of the committee as to the importance of identification of designated smoking areas.

Mr. Ronson: It is important, we believe, in the interests of good employer-employee relations that employees understand exactly what the rules are in terms of smoking. Obviously, designating an area and having a specific policy set out as to where you can and cannot smoke is part of that. That is simply good communication between the employer and its employees.

Mr. Kanter: Presumably that would be by way of signs or something of that nature.

Mr. Ronson: Sure, or floor plans or a written policy circulated to all employees; probably signs of some sort in reception areas and conference rooms and things like that in the case of a service business.

Mr. Allen: I want to thank you for your uncompromising brief and for the question and answer technique you used in the middle of the brief, which I thought was a very, very helpful technique.

I want to make certain you are as serious as you say. You have this very strong sentence on pages 9 and 10, "Not defining what constitutes a 'designated smoking area' could render this legislation worthless." Are you saying that if this bill passes unamended it will really end up being of little consequence for us in the workplace in protecting the health both of smokers and nonsmokers in the workplace?

Mr. Ronson: I think that is a fair comment. It may be of symbolic importance, but it certainly would not be of substantive importance from a health standpoint to not make the changes to the bill that the cancer society

has suggested. It may improve the situation, but that would be the individual employer's and employee's initiative; it would not be caused by this bill.

Our concern is that this is the first piece of legislation that has been introduced in Canada. As often happens—we appreciate this, I think, as a national organization—other provinces look to Ontario in some instances. They may not admit it but they do. They look to Ontario in terms of model legislation. As a cancer society, we would obviously like to see good model legislation.

The other concern we have, and certainly you people more than we are cognizant of it, is how difficult it is to amend legislation after it has been implemented. The legislative agenda is very full. There is competition for time in the Legislature. It would be our strong hope that we get a good piece of legislation, a model piece of legislation the first time through, because Ontario, and Canada in general, is looked at as a leader in the whole area of dealing with the health consequences of tobacco. This is another chance to demonstrate leadership, if some of the changes that have been suggested by the various health groups are made.

Mr. Allen: So that while the bill purports to set up some kind of minimum standard, what you are telling us is that really there is no standard at all, that the 25 per cent in the designated area is really meaningless when you come right down to it in terms of the distribution of smoke in an enclosed workplace and the effect it has on the individual workers?

Mr. Ronson: Yes it is, the way the bill is currently defined. The way the definitions are currently set out, if an employer does not want to institute an effective workplace smoking policy, this bill certainly will not force that employer to do it.

Mr. Sterling: I would like to thank you for your support of Bill 157. If this bill were stiffened up, Bill 157, which has already received second reading in the Legislature, really might not be necessary. That would be my greatest wish, to see my own piece of legislation die a natural death.

The change to the definition of "designated smoking area," as you are proposing it, I think really takes care of two problems you are addressing. Is it that you are trying to, by changing that definition, face the issue of clearly saying that if you are going to have a smoking area it has to be a separate area?

Mr. Ronson: Yes.

Mr. Sterling: The second issue is that you are really, in changing the definition, creating a right for the nonsmoker to a smoke-free environment? Are those the two issues you are dealing with there?

Mr. Ronson: Definitely. The first issue really makes it unnecessary to define a percentage of the workplace that will be smoke-free, or conversely—the legislation puts it the other way—that can be designated. You do not need to designate a percentage if in fact the area is set aside, separately ventilated, etc.

To the second part of your question, yes, the proposed definition would ensure that nonsmokers had a smoke-free work environment, because anyone who wanted to smoke would have to do so in the designated smoking area, which would be independently ventilated, and therefore the remaining part of the workplace would by definition be smoke-free.

Mr. Chairman: One question, Mr. Black, during the time we have with this delegation.

Mr. Black: I wonder if Dr. Howe would comment on research that talks about or addresses the question of the impact on one's health from secondhand smoke.

Dr. Howe: Certainly. I think the evidence is really extremely clear. Cigarette smoke is by far the most clearly established and strongest human carcinogen. If you think in terms of lung cancer, the person who is a moderate or heavy smoker has something like a 10 per cent lifetime risk of developing lung cancer. That is a huge risk. It far outweighs virtually anything else we can think of in terms of risk. By extrapolation, we know, again by direct measurement—for people who are exposed to secondhand smoke, we actually can physically measure within their bodies their level of exposure—as indicated in the brief, that people with substantial exposure to secondhand smoke frequently have levels in their body fluids which approach those of occasional or light smokers. The evidence that secondhand cigarette smoking is a carcinogen is obvious and direct. I do not think there is any question at all, simply from those facts I have stated, that passive smoking will in fact cause lung cancer.

The only remaining issue is just how big is that risk. Those are the studies which are frequently talked about and sometimes attacked on the basis that they are not conclusive. They are not conclusive in estimating the actual magnitude of the risk, but the question of whether there is an increased risk is, in my opinion, beyond dispute. Whether it is an increased risk of 20 per cent, 30 per cent or 100 per cent is almost irrelevant in this context, as far as I see it. We are dealing with the most potent human carcinogen we know of, and I think if it was anything else—if it was asbestos, if it was some chemical—the issue would not even arise. Our safety standards for exposure to carcinogens for other substances are far more rigid than those for exposure to cigarette smoke.

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So I think that very clearly, yes, the evidence is as absolute as it can be that secondhand smoking will in fact cause cancer. The only remaining issue is how large that risk is, and that is a scientific question we are still addressing. But it is very clear that even that question is now becoming resolved and we are talking about a measurable and substantial increase in risk.

Mr. Chairman: Thank you, doctor. I think we have gone over our half-hour, but it has been very useful having your answer to that very important question. I want to thank both of you gentlemen for coming and giving the perspective of the Canadian Cancer Society on this important issue.

Dr. Howe: Thank you very much.

Mr. Chairman: Our next organization is the Canadian Council on Smoking and Health. Representing this organization is Ken Kyle, chairperson of the legislative committee. Replacing Pierre Robitaille, who was to have been here and is unavoidably absent due to other commitments, is Cindy Dachuk. As well, we have Carole Humphries, co-ordinator, workplace education, of the Canadian Cancer Society, and Murray Mackenzie. I think it would be helpful to the committee if one person introduces the group and then you can proceed to your presentation. You understand you have half an hour?



Mr. Kyle: Yes.

Mr. Chairman: You may leave some time for questions from committee members at your discretion.

#### CANADIAN COUNCIL ON SMOKING AND HEALTH

Mr. Kyle: I am Ken Kyle, chairperson of the legislative committee of the council. On my left is Carole Humphries and on my far left is Cindy Dachuk. Pierre Robitaille could not make it at the last minute; he has been involved with some labour negotiations. I have Murray Mackenzie on my right. Mr. Mackenzie is vice-president, administration, of Mount Sinai Hospital here in Toronto.

The council thought it might be helpful for members of the committee to hear from employers or administrators and institutions that have actually put into effect a total ban on smoking in their organizations, so it might give the committee an idea about how easy or difficult it is to implement a total ban on smoking.

I would like to take just a couple of minutes at the beginning to explain what the council is. The Canadian Council on Smoking and Health is a national organization funded by a number of national health organizations, including: the Canadian Cancer Society, the Canadian Heart Foundation, the Canadian Lung Association, the Canadian Dental Association, the Canadian Medical Association, the Canadian Nurses Association, the Canadian Pharmaceutical Association, the Canadian Home and School and Parent-Teacher Federation, and the Canadian Teachers' Federation, plus a number of other organizations.

Just to be clear where we are on the legislation: I have checked with our national president and other officers, and I think the view of the council would be that we would rather have no bill at all than a piece of legislation that is seriously flawed, for the reasons that have come up earlier, and that the council, being a national organization, is really concerned about the precedent that this legislation can serve in other provinces.

We have already received calls from Saskatchewan and from other provinces wanting to know what is happening. Other provinces are talking about legislation, and we think some legislation needs to be passed that would protect the health of nonsmokers and smokers.

I would like to encourage members of the committee to take into consideration some of the views of James Repace who will be here this afternoon. It was good news to the council, as well, that one of the world authorities on the subject would be able to come and appear before the committee.

Perhaps I could turn the time over for a few minutes to Carole Humphries, then Cindy Dachuk and then Murray MacKenzie.

Ms. Humphries: Good morning. I am responsible for a program called the workplace education service. It is not a new program; in fact, it was started some 36 years ago. Its purpose is really to assist individuals in companies to adopt a healthy lifestyle. About three years ago, we were getting requests for help from both the employers and the employees, so we have launched a program or a service to the organizations to help them develop a policy that is a nonissue. I guess that is what I feel is my real reason for



being here this morning, to share with you what is going on, what has been done and what kinds of things are necessary.

Have companies implemented a policy? There have been lots, but what I am going to share with you are some of the experiences we have worked with. From January 1988 to January 1989, the workplace educational service has worked with some 205 companies in Ontario. When I say "worked with," this means a minimum assistance of two and a half hours of consultation.

As of March 1988, 59 companies have created a smoke-free workplace: 53 of those have been a complete ban; six of those are with separate ventilation to the outside.

Who are they? What kind of companies are they? They vary. They can be large multinational organizations such as Manufacturers Life Insurance or Canadian Imperial Bank of Commerce, with head offices in Toronto, or such corporations as Xerox Canada, which has put that policy through all its divisions throughout Canada.

We have small ones, lesser-known ones such as Paterson and Sons, a small grain elevator company in Thunder Bay; or Wenger Brothers in Listowel, a small communications company; or in Ridgetown, Ontario, a company of 30 employees called Fabricated Steel Products. Companies can be large. They have been small. They have been rural and they have been urban.

Why have they implemented a smoking policy? The reasons have been really varied. There have been a number of companies, and I guess it brings to my mind Denison Mines in its facility up in Elliot Lake. I remember Andy Rickaby, their vice-president of operations at that time, who was at the site, asking me how he could ignore the implication, the evidence he saw as he sat on the Ontario safety in mines committee and the awards being awarded by the Workers' Compensation Board; that the management at Denison was really concerned about the health of its employees.

Other organizations have done it because of requests of their employees coming to them and saying, "We would like this endeavour." Other organizations have had employees sitting home with medical certificates verifying that they cannot come back to work until they have put in a smoking policy and restricted smoking in the workplace.

Why else? Management is responding to the staff. When we look at our population, the Department of National Health and Welfare in its survey indicated that two thirds of the population is nonsmokers. These same people are employees in a workplace.

Last year the cancer society responded to requests with more than 1,000 kits. I cannot help but remember just yesterday an employee from Richmond Hill who called me and said: "My boss is a smoker. What can I do? How can I go about helping to get a policy in place?" My response is, "Shouldn't the government provide him with one more tool to ensure that he has a safe working environment?"

Another question in my mind that might be one in your mind is: Do smoking restrictions not just create more problems for a company? Companies with which we have worked have actually documented an improvement in employee morale following the implementation of their "no smoking" policy. In a survey, the employees in one company were asked if employees should be left to work out the smoking-related problems among themselves. Sixty-eight per cent of

those employees disagreed and felt it was the responsibility of the company to develop that comprehensive policy. Only 26 percent of those employees agreed.

Employees in many companies are tired of fighting over this issue and want sensible solutions. Should the government of the people not provide a responsible response? Additionally, once the policy has been in place, management no longer wastes its time or energy on the smoking issue. They have no fear of impending lawsuits and they have reduced the likelihood of company fires, have cleaner air and healthier employees.

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Are there resources out there to help them put in a policy such as you are proposing? Yes, resources exist in both the private and public sectors. These include both material and human resources. There are private corporations that can provide consultation services. There are services provided by volunteer agencies and organizations such as the Canadian Lung Association, which provide some support. Public health units have developed programs and staff; for example, Ottawa-Carleton, Peel and Niagara.

The Canadian Cancer Society can help companies, as you will hear. We can go through and help them identify successful strategies, help them to support their smokers and their employees and share those strategies, conduct awareness sessions for employees to ensure that policy is adhered to and goes well.

What I would like to say in conclusion is that given the evidence available, there are really only two options available for employees and employers with respect to tobacco: either a complete ban or confined areas that are separately ventilated to the outside. Anything else, I think, will be less than symbolic, less than real; anything less will undercut standards already won by other workers in Canadian companies.

Mrs. Dachuk: The question for employers such as Cyanamid when we are looking at the implementation of a smoking policy is not so much whether there would be a policy—it was a given for us—but whether to go to a partial policy in the sense of a designated area or a complete ban. Obviously, we went to a complete ban.

In my discussions with other companies, the difficulty for human resources people, especially prior to the implementation of our program, was the fact that designated areas are very rarely effective. What they have encountered is that a large number of their nonsmoking people start to resent the fact that the smokers now have a benefit that they do not, and benefits are a very big issue in the workforce. No employee is able to get something that other employees do not want to have. What they are finding is that they have nonsmokers now designating areas for them to go and take smoking breaks, despite the fact that they are not smoking.

For us, that was a real concern in the implementation. What we did was take it to the employees. We created a committee of managers, nonmanagers, employees from all levels, nonsmokers and smokers alike, people who had smoked and ultimately quit, to be able to decide on what our policy ultimately would be. They were the ones who decided to go completely nonsmoking, to not have a facility on site whatsoever, designated space for anyone to smoke.

For us, the decision also hinged on the fact that part of my company is in fact a pharmaceutical company that is involved in the development and

research of oncology products, treatments for cancer. That played a heavy factor as well, because it is a little hypocritical for the company to support both the smoking environment and also be able to make a fair bit of money on treatments for cancer.

Ultimately as well, the goal of Cyanamid was in dealing with the wellness of our employees. Smoking was one part of that. It was the first step we took towards the implementation of a complete wellness program within the organization which addressed the issues of health, fitness and nutrition. Since the implementation of the smoking policy, we have put into effect informational seminars on issues that are important to the employees.

Very often they choose what those seminars are going to be on, activities such as low-impact aerobics, t'ai chi, skiing days, whatever is of interest to employees. There are various contests whose main goal tends to be a little more relaxation and fun, but they also have an informational component, addressing issues on fitness, nutrition, health. There are various clubs as well.

The main goal has been wellness. We found that the implementation of the complete ban, taken in light of the wellness issue, really presented no problems or difficulties for us. The negativism often associated with a complete ban was gone, because it was tied into a definite and very real concern for the health and wellbeing of our employees. It ultimately comes back to us in increased morale, increased productivity and decreased absenteeism and turnover.

Mr. Mackenzie: I am Murray Mackenzie. I am here representing Mount Sinai Hospital, of which I am a vice-president. Mount Sinai Hospital is a 526-bed major teaching hospital in downtown Toronto. We have more than 2,500 full-time and part-time staff. In addition to this number, we have more than 700 medical and dental staff, 600 active volunteers and 200 interns and residents. There are some 2,000 outpatients visiting the hospital each weekday and approximately 2,000 visitors to our inpatients and accompanying outpatients. It is a very busy place with lots of traffic all day long.

Beginning in 1975, the hospital implemented a smoking policy which restricted smoking in the hospital to designated areas. Over the years, this policy became increasingly restrictive. In June 1987 the hospital implemented changes to its smoking policy which limited smoking largely to the cafeteria and private offices. Effective from July 1, 1988, Mount Sinai Hospital became totally smoke-free.

The decision to create a totally smoke-free environment for patients, staff and visitors is based primarily upon the hospital's recognition of the deleterious effects of smoking and secondhand smoke, as well as the hospital's commitment to the promotion of community health. Smoking is unequivocally the leading cause of premature, preventable death. It is morally offensive to the hospital and its mission.

Mount Sinai Hospital has some of the leading medical and surgical oncologists in the country on its staff. Its world-class medical research institute is acclaimed for its work on the molecular biological aspects of cancer. We also have a major research epidemiology unit.

Consensus of the entire hospital was unanimous in the entire approval process in bringing through this policy. The risk not just of smoking but of second-hand smoking is, in the opinion of the hospital, quite substantial.



Like Cyanamid, when we introduced the policy we did consult very actively with our staff. It was, in fact, largely based not just on the opinion of the experts but the staff themselves that we decided to make the hospital totally smoke-free. It has been a highly popular measure, initially with our staff, but it has also proven to be quite popular with our outpatients and inpatients.

We have, of course, received a number of letters, comments and other feedback from our patients, and I thought I would read just one excerpt from a letter from a sister of a patient. This is highly representative of the overwhelming feedback we got. The overwhelming feedback is at least 10 to 1 in favour of the policy. I will just read an excerpt or two:

"My letter is a thank you to Mount Sinai for their part in a positive outcome." That is in dealing with the case of her brother. "My brother was admitted to Mount Sinai for surgery in November. The day of admission was the first day without smoking for more than 40 years. He spent about two weeks in hospital and upon discharge did not reactivate the three-package-a-day habit. Our family is very pleased and I believe that without the smoking ban, this would not have been accomplished."

Mount Sinai has indirectly experienced other benefits in terms of reduced absenteeism and reduced turnover. I cannot attribute it directly to this policy, because we have a very active attendance-awareness program and I think very high staff morale, generally speaking, in the hospital. In any case, we were not looking for this type of benefit.

As I indicated to you before, I think this is the right policy and it is the right thing to do in the interests of the community and in the interests of public health.

Mr. Chairman: Thank you. It has been an interesting presentation. We have a few minutes for questions, Mr. Allen, if you would like to start.

Mr. Allen: I would like to thank you all for that very helpful series of presentations. What I would like to ask about most of all has to do with the details of costs of implementation of smoke-free environment policies and techniques in the workplaces you have worked in. We have a fairly broad overview of what you do and the methods that are applied, but could you give us some indication of where there are cost elements that enter into those measures for the employer, both going the route of the complete ban on the one hand, or the designated smoking approach on the other?

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Ms. Humphries: Generally, what our experience has shown is that the cost of implementing a complete ban or a smoking policy is about what the cost is of having smoking in the workplace. This is based on an average number of smokers with a normal ventilation system in an average-sized company.

It may be dependent upon whether they choose to go with separate ventilation, as some divisions of Xerox Canada have, for example. It is dependent upon where the position of their room is and how easy access is. It can be as little as \$500, which is what it cost one food company, for example, to what I understand it cost Xerox, around \$3,000 for the change in the ventilation system.

I can think of an insurance company here in Toronto where there have



been cost savings. They did not realize what it was costing to maintain their building. They have saved up to 20 per cent on the maintenance of their building since implementing their smoking policy.

Sometimes costs are incurred by people taking them up on the financial incentives, or assistance if they choose a smoking cessation program. Our emphasis with companies has been not to enforce that their employees be nonsmokers, but where and when they smoke and what they can do to help them work with the policy they have put in place. In Cyanamid's experience, a lot of employees have not taken them up on that offer; we are not sure what the reason is. But the costs have been very low. All companies have said it has been one of the most worthwhile ventures they have.

One major organization, and I hate to refer to it because it is in the United States, has had out of its 15,000 employees about 3,000 employees take it up, but they included their spouses and family members, because they realized that going home to a smoking environment would be a hindrance and a hardship for them. Cindy, maybe it would be appropriate for you to talk about it.

Mrs. Dachuk: In terms of implementing a completely nonsmoking environment, the costs are minimal depending upon which direction you want to take. We wanted to make the transition as easy and as smooth as possible for our employees, so we offered cessation programs if they chose; at no point did we force or recommend to anyone that they had to take a program. Again, if they wanted to look at this as an opportunity to quit, we would certainly cover the financial constraints of taking a program.

As Carole mentioned, we had one person take advantage of that. The difference we found was that as soon as we volunteered to bring a program in-house on our time and pay for the program, so that in essence we were not only covering the costs of that but the cost of their salary for going to the program, we then had 20 people who took advantage of the program, all of whom have not started smoking again since the program. It has been effective that way. Our costs have been related more to the cessation programs than to anything else.

We have made use of the services of people such as Carole, who have no definite costs incurred in terms of the education of our employees to smoking issues. We certainly made use of that in terms of the committee that was going to be formulating our definite policy. We made sure they at least had the information and tools with which to make their decisions.

Mr. Allen: Is there a typical per capita cost on a smoking cessation program?

Mrs. Dachuk: They vary in cost. It can go anywhere from about \$50 a person to \$250 to \$500, depending upon how farfetched you want to get. Hypnosis is involved in some. We did have one person walk around with a little minicomputer where he punched in whenever he felt like a cigarette; eventually the computer told him when he was allowed to have a cigarette and cut him down slowly. There are very creative ways of stopping smoking, each of them, again, responsive to individual needs and with their own costs attached to them.

Mrs. Cunningham: The first one has to do with enforcement. My bias is to have no smoking, but in this bill, where we are looking at enforcing the 25 per cent part as opposed to enforcing a designated ventilated area, do you have any comments on that as far as a workplace goes? Which would be the easiest to enforce?

Mrs. Dachuk: For us, when we were looking at it, we thought enforcing just the designated area would be the most difficult. My experiences in talking with various organizations through the Personnel Association of Ontario is that the area, unless it is definitely defined by doors and walls, tends to start growing. It is very hard to start to limit it, short of putting little lines on the floor for people to stay in.

Implementing a completely "no smoking" policy is a lot easier, because it is right or wrong. It is very clear-cut and very well defined, and we have a very definite system the committee developed in terms of warnings, etc., and what the repercussions would be for anyone not following through on the program.

Mrs. Cunningham: Specifically, though, would it be easier if we had the word "ventilated" in there, if we insist? This is a piece of legislation, obviously. It is not going to be easy to convince our colleagues to change it. That is what we are trying to do. If we put the word "ventilated" in there, does that then mean the room has to have the walls and the doors and the ventilation out and would it be easier to enforce? I think all of us are interested in the enforceability of a law.

Ms. Humphries: Our experience has been, in companies that have shared that with us and as we worked before and afterwards, that the easiest policy is the policy that restricts, a complete ban, or that it is separately ventilated. There is one problem, to be honest, with the separate ventilation. Sometimes employees can take advantage of going to that area and companies have experienced a decrease in productivity. That is an issue they have had to address.

Mrs. Cunningham: Okay. This is a good question; you will not want to miss this one, Mr. Chairman.

Mr. Chairman: I will not want to miss it? Okay, you have my curiosity, Mrs. Cunningham.

Mrs. Cunningham: This is a good one. This is especially for Mr. Miller.

To Mr. Mackenzie: Everyone in Toronto knows your hospital is nonsmoking, because all we have to do is drive our cars past it. Whenever I am in a cab, I will say, "What's going on at the hospital?" and they will say, "Nobody smokes there." I think that is great, but Mr. Miller and I are interested in attitudes, because I share his concern on this one.

In setting up the smoking patios in the schools, what kinds of attitudes are there when you see a group of physicians standing outside or smoking with their white coats on? Have you had a problem with that? What would you say to the public, what would you say to Mr. Miller, what would you say to me about attitudes?

Mr. Mackenzie: Attitude is created in the public.

Mrs. Cunningham: You can say whatever you like in response to the question, you have the floor, but you know where we are coming from. We wonder if that is a good thing.

Mr. Mackenzie: Let me just make a couple of comments. For the most part, the individuals standing outside of the hospital are not physicians.

There are very few physicians who smoke on the staff of the hospital. In fact, off the top of my head, I can only think of one in the entire staff, certainly of the 140 who have offices in the hospital.

In terms of those who do go outside to smoke, which is the only place they can go if they wish to smoke during their breaks, some of the smokers in the hospitals are the greatest supporters and advocates of the policy. The vast majority of them want to stop smoking. Many of them have stopped smoking in the last year. Like Cynamid, we did provide smoking cessation programs. We brought Metropolitan Toronto and York Region Lung Association to the smoking cessation course and still do, not just for our own staff but for the community, and those are well appreciated by the staff. A lot of them are continuing to try to stop smoking, but I would say that generally we have the lowest proportion of smokers on our staff of any hospital in the city at this point.

For one thing, smokers do not come and work at the hospital any more. That is fine, too. As a rule, I think nonsmokers are generally more productive. Of course, in this era of financial constraints we have to maximize productivity in every way we can.

I know that certainly the impression that is created may raise some questions, but it is a statement by the hospital. We simply cannot and will not allow smoking to occur within the walls of the hospital. That is a position with which we feel very comfortable.

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Mr. Chairman: I think we should move on.

Mrs. Cunningham: That is fine. Thank you very much.

Mr. Chairman: Mr. Black is next.

Mr. Black: I certainly feel badly about taking Mrs. Cunningham's time, but I would like to—

Mrs. Cunningham: You do not look it at all. You could give it back to me.

Mr. Black: I would like first of all to make a comment, if I may, and also ask a question.

Mr. Chairman: As long as you take the delegation's—

Mr. Black: I would first of all like to congratulate both Mount Sinai and Cyanamid on their very enlightened approach to both employee relationships and concerns about the welfare and promotion of healthy lifestyles for people who work for them and for people who are in their institutions. Would that more employers would take that kind of stance.

I have a particular interest that is somewhat different, and I would both ask this question and perhaps plant a seed. Have you given any thought, in terms of the educational components of your program, to educating your employees on the dangers of illegal drug use, as well as on the dangers of tobacco and perhaps other substances?

Mrs. Dachuk: Yes, very much so. We are just in the process of



developing what we have termed an EAP, an employee assistance program, where as it looks right now, we will be completely taking on all the financial responsibilities for employees in relation to any counselling and treatment they would need for family problems, drug abuse, alcohol abuse, etc.

Coupled with that will be a very strong educational program that we will be bringing in-house, with trained consultants and counsellors, again, to be able to start the educational process, help both the managers within the company and also the employees themselves going home to be able to identify those issues, so that if there are problems they can start dealing with them proactively rather than our having to react because it becomes a productivity issue.

Mr. Black: Thank you very much. I hope that will serve as an example for many other businesses and industries in this province.

Mr. Chairman: Not exactly on topic, but an important question.

Mr. Black: Very closely related, however.

Mr. Sterling: I want to thank you all for coming. I am extremely impressed with all of your presentation. I think it is important for this committee to know what your bottom line is on Bill 194. Do we pass it unamended or do we oppose it in this form? How important are amendments to it?

Mr. Kyle: It is absolutely critical from the point of view of the council that there be amendments to the bill to protect the health of nonsmokers. The council is officially on record, and we have checked with the president and so forth, that we would rather see no bill than a bill that has serious flaws in it.

Mr. Sterling: Thank you.

Mr. Chairman: Thank you very much for coming to the committee and sharing your views with us. I know you represent a coalition of many interests focused on this issue. We appreciate hearing from you on it.

Mr. Kyle: Thank you.

#### HALTON REGIONAL HEALTH DEPARTMENT

Mr. Chairman: Our last presentation of the morning is from the Halton regional health department. Representing Halton region is Merle Kisby, smoking prevention co-ordinator. You have half an hour for your presentation. You may leave some time for questions from the committee at your discretion.

Ms. Kisby: Thank you, Mr. Chairman and members of the committee. The Halton regional health department supports the intent of the provincial government to restrict smoking in the workplace with the introduction of Bill 194. Smoking is the number one preventable cause of death and disability in society today. In Canada, 30 per cent of all deaths due to coronary heart disease, 30 per cent of all cancer deaths and 90 per cent of all lung cancer deaths are directly attributable to smoking. A total of 30,000 deaths a year are due to smoking, or one Canadian dies every 17 minutes due to it.

The evidence linking smoking as a major cause of death and disease among smokers is irrefutable. A principal concern of researchers at present is the effect of secondhand smoke on the nonsmoker. It is estimated that



approximately 63 per cent of nonsmokers are exposed to secondhand smoke at work. This percentage increases to 86 per cent if one includes exposure at home.

The concerns surrounding secondhand smoke have arisen as a result of evidence from recent studies. These studies clearly demonstrate an increased risk to the nonsmoker exposed to tobacco smoke on a regular basis for the following conditions: irritation of the eyes, nose and throat; exacerbation of allergies, asthma and angina; increased frequency of pulmonary symptoms such as chronic cough; increased risk of death and disability to the foetus of a pregnant employee, and lung cancer.

In addition to human costs, smoking also puts a financial strain on society. In 1982, smoking cost Canada an estimated \$7.1 billion in lost income, health costs and fire losses. The total contribution of the smoking industry to society in that year was \$4.4 billion. Thus, smoking caused a net drain of \$2.7 billion on Canadian society. The decrease of environmental tobacco smoke in the workplace will greatly enhance the overall health and productivity of Ontario workers.

The Halton regional health department has had extensive experience with the development of workplace smoking policies and welcomes this opportunity to comment on several aspects of the bill and to make recommendations based on that experience.

In 1986, the Halton District Health Council identified smoking and secondhand smoke as a major preventable cause of death and disability in Halton. Since that time, the Halton regional health department has been actively involved in strategies to decrease the use of tobacco and to decrease the amount of tobacco smoke in the Halton environment. The Halton regional health department provides consultation in the development of workplace smoking policies throughout Halton to industries, businesses, organizations, municipal and regional government and school boards.

It is estimated that well over 50 per cent of Halton's workplaces have some form of smoking policy. There are two types of policies, one being a total ban and the other being designated smoking areas. In the area of designated smoking areas—the majority of the workplaces in Halton have smoking policies that do designate a smoking area—a popular and effective process used to develop the policy is, first, to establish a smoking committee, and second, to conduct an employee survey, and to develop the smoking policy based on that.

The smoking policy committees are ideally made up of representation from all employee groups. They represent both smokers and nonsmokers. The health and safety representatives are important members of those committees.

Smoking policy surveys help to determine four important factors: What kind of policy the employees want, whether they want a total ban, a designated area or no restrictions; if they do want a designated area, what the preferred area is; how many of them are bothered, and how much, by the environmental tobacco smoke; and of the smoking employees, how many are interested in smoking cessation information or programs.

The results of the surveys are remarkably similar in all the areas. First, a large majority of employees want smoking restricted in the areas in which they work. The preferred designated areas are smoke-only areas where the tobacco smoke does not filter into their work environment or become recycled

in closed ventilation systems. A large number of the employees experience irritation and discomfort from secondhand smoke, and we know that approximately 20 per cent of people in society are affected medically by secondhand smoke. The majority of smoking employees also state they are interested in smoking cessation information and programs.

In the companies where a total ban on smoking is developed, although they are still in the minority, it works well when the decision comes directly from management or from corporate policy. The success of policies that create an atmosphere free of environmental tobacco smoke is in part due to the large number of nonsmokers in the workplace. We know that 72 per cent of Ontario's employable population are nonsmokers. Smoking employees also adapt well. There is an initial adjustment period as the nicotine decreases in their system. However, once that occurs there is acceptance. This is, again, probably because a majority of smokers would like to quit smoking. Studies show that up to 90 per cent of smokers would like to quit.

I would like to highlight one other area of the bill. That is clause 2(2)(b). Clause 2(2)(b) of Bill 194 states that the bill does not apply to an area primarily for serving the public. Day care, nursery schools, schools, hospitals and health care facilities can be defined as workplaces that serve the public. The importance of these institutions providing a healthy environment and a role model for children and the community cannot be overstated.

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There is probably no single behaviour engaged in by children and adolescents that has a greater long-term impact on health than smoking. The mortality rate for smoking-related diseases of individuals who began smoking at 15 years of age is 50 per cent higher than for those who began smoking in their 20s. The increased susceptibility of children and adolescents to the hazards of smoking and secondhand smoke may be due to their greater lung ventilation per body weight. Although smoking by teenage boys is declining, the number of teenage and young women who are smoking has remained constant in our society.

One of the most important factors influencing children and adolescents in their decision to smoke are the social reinforcements received from smoking. These include parental influence, siblings and peers, environment and advertising. School-related factors known to influence smoking include smoking by staff members on the premises or school outings and the extent to which smoking is permitted or condoned. Research has shown an increased prevalence of smoking in schools with designated smoking areas compared to schools where smoking is prohibited.

Health agencies have attempted to take a leading role in decreasing the amount of tobacco smoke in the environment. Although a large number of health care organizations have totally banned smoking, the ban is by no means complete; for example, hospitals.

Based on our experience, with the development of smoking policies in Halton, the Halton regional health department requests the committee consider the following recommendations:

1. Strengthen the section on designated smoking areas. The lack of a clear definition on "designated smoking areas" leaves it open for employees to designate each smoker's workspace as an area for smoking. As the intent of

Bill 194 is to provide a smoke-free working environment for Ontario employees, it is essential that a clear definition of "designated smoking areas" be provided. This definition should prohibit smoking in all work areas, guaranteeing employees a smoke-free environment, and prohibit smoking in areas which all employees have access to, for example, corridors, washrooms, etc.

2. We recommend a total ban on smoking in day care centres, nursery schools and schools. We know that children are especially sensitive to the detrimental health effects of secondhand smoke and we also know that one of the factors influencing children to smoke is the degree to which smoking is considered the norm. Teachers and child care workers provide an important role model for children. A total ban on smoking in day care centres, nursery schools and schools will be an important factor in decreasing the onset of smoking by Ontario's youth.

3. A total ban on smoking in health care facilities: Secondhand smoke is recognized as a hazardous product in our environment. Agencies, organizations and businesses promoting healthy behaviours, or caring for sick patients, should provide atmospheres free of environmental tobacco smoke.

4. A plan for implementing Bill 194 will greatly enhance the ease with which the legislation is accepted by the community. In Halton, the health agencies are already receiving an increased number of calls on the pending legislation. The health department, the Ontario Lung Association, the Canadian Cancer Society, the Heart and Stroke Foundation of Ontario and the Alcoholism and Drug Addiction Research Foundation are the community agencies that have traditionally provided leadership and education in the area of smoking prevention in local communities.

In order to provide support for Bill 194, health agencies will require information on Bill 194, including enforcement; information on how the public can obtain details on Bill 194, for example, hotline numbers; and public educational materials for reference and distribution.

In conclusion, I would like to say that smokers and nonsmokers alike support smoking policies in the workplace. Bill 194 can be historic and progressive health legislation which will serve as a model for other communities. The province of Ontario's intent to provide smoke-free working environments for Ontario workers will be greatly enhanced by strengthening the legislation, particularly in the area of designated smoking areas.

Mr. Chairman: Thank you very much for your presentation. We have some questions from committee members, starting with Mr. Daigeler.

Mr. Daigeler: Thank you. I appreciate the presentation you made, which I think is very clear. About your own position, I read here that you are smoking prevention co-ordinator. Is that a staff position by the region?

Ms. Kisby: Yes, it is a staff position. I am working in the areas of developing smoking policies, public smoking bylaws, working with municipalities and also in education.

Mr. Daigeler: As far as you know, is there any other similar position across the province?

Ms. Kisby: Yes. Health departments are putting more and more



emphasis on the prevention of smoking and smoking in the environment, so health departments are looking to creating these positions.

Mr. Daigeler: You are doing that full-time?

Ms. Kisby: Yes.

Mr. Daigeler: I find that very interesting and probably quite enlightening, I must say. I wish to congratulate the region for doing that.

You mention in your brief a fact that always strikes me, and I think it is true. I just wonder whether you have any kind of information as to why it is in fact so. Smoking by teenaged boys is declining, but the number of teenaged and young women who are smoking continues to rise. That is something I think is correct, but I just do not know why that would be the case.

Ms. Kisby: I would like to clarify that a little bit. The rise is still happening in teenaged women up to women into their thirties. On the whole, female smoking rates have not decreased. What has happened is that men started smoking initially. It was the thing to do for men and so their rates increased. Women started later and so they peaked later.

Men have now started to decrease their smoking rates and women are just still here at the top and starting to come down. Men are still smoking a little bit more than women, but women are still at the top and have not started to decrease. We still have major concerns for women, say, from about 15 to 30. There is a high percentage of women smoking in that area. Those, of course, are the child-bearing years.

Mr. Sterling: I want to congratulate the region and yourself for being involved in this. I think the problem we had in this province, until this bill was brought forward, was that there was no leadership coming from the province in dealing with the issue and it was left to the municipalities to do something about it.

In this bill, the enforcement mechanism is through the Ministry of Labour, the same as for any other occupational or health problem within a workplace. You would call in the Ministry of Labour to enforce. The city of Toronto, I believe, uses the medical officer of health and his office to enforce its smoking bylaws. Have you got any comments with regard to the enforcement, as to the practicality of using the Ministry of Labour versus maybe the medical officer of health or some other kind of enforcement agency?

Ms. Kisby: Our experience with enforcement, both of public smoking bylaws and of the policies in the workplace, is that there is a minimum amount of enforcement necessary. The public is ready for smoking policies and smoking bylaws. Therefore, they are receptive and considerate of the bylaws and policies and there is not a large demand for enforcement.

Mr. Sterling: I agree with that. That, I guess, is part of the reasoning for my question. As I understand it, having talked to the people who are involved with the city of Toronto bylaws, an inquiry normally comes in from an employee of a certain firm. I think that at the time I went to visit them, some six or eight months ago, they had had something like 300 or 600 inquiries with regard to smoking in a workplace. Then they went out to the employer's place and a deal was struck and an amicable settlement was made in all but one of those cases.



I wonder whether or not the Ministry of Labour, through its normal inspector being the same person who would be dealing with the other occupational health hazards, would have the mandate to go try to strike a deal, make the deal, etc. I guess my question is whether or not you would be better off with the medical officer of health or somebody who is local on the scene to strike a deal.

Ms. Kisby: I am not familiar with the capabilities of the Ministry of Labour in enforcing this. I think I could say that the medical officers of health across the province would be receptive to at least interpreting the bill. As to the actual enforcement, I would prefer not to make a comment on that. I do not know the answer to that.

Mr. Sterling: I guess I would prefer the medical officers of health, because they, by their very nature, have a mandate to improve the health of the community in which they live. I mean, that is their job.

Ms. Kisby: They do have the health mandate.

Mr. Sterling: Therefore, they would be perhaps more proactive than a Ministry of Labour official. Maybe we can have an answer from the Ministry of Labour with regard to its ability to implement this legislation at some later time, Mr. Chairman.

Mr. Chairman: If we have time, we will get back to that.

Mr. Allen: Thank you very much for your presentation. Like the other questioners, I am impressed by Halton's and other municipalities' actions in establishing co-ordinators who will implement nonsmoking policies across the front of regional activities.

I do not know whether you were here earlier and heard other agencies that made presentations this morning tell us that, from their point of view, looking at this as a precedent-setting piece of legislation not just for Ontario but for the country as a whole, the legislation, as they view it, really is something they would rather do without if it is not amended substantially in order to define some of the points that you also note as weaknesses in the legislation.

Could I have your view of the seriousness with which you view the weaknesses of the legislation? Do they really invalidate it as a significant measure that would establish appropriate precedents and tackle the issue in an effective way?

Ms. Kisby: The way the bill stands now, it does not deal with the health issues of secondhand smoke. It also potentially sets up continued confrontation between smokers and nonsmokers in the workplace the way it reads now.

Mr. Allen: That is very succinct and to the point. Thank you very much.

Mr. Miller: I was wondering how long you have been working with the Halton health department.

Ms. Kisby: I have been with the health department for seven years. I have been in this capacity for three.

Mr. Miller: From your experience, as people switch from smoking, can you see any drifting to using other substances or to other fields when they give up one habit?

Ms. Kisby: And start another? Actually, nicotine is an entrance drug to using other drugs, so it is in fact the opposite. People who are using nicotine are more likely to use other addictive substances. People who do not use addictive substances are not as likely to take on new habits. That would apply to reformed smokers as well as nonsmokers.

Mr. Miller: Are there any statistics to verify that?

Ms. Kisby: Yes, certainly statistics on its being an entrance drug. Is that what you meant?

Mr. Sterling: On a point of information, I have been told by one of the presenters this afternoon that James Repace, who is from the Environmental Protection Agency in the United States, is going to join in with one or two of the last three delegations today. He is probably one of the foremost experts in terms of ventilation systems and the office environment as such. I just think that it is important for the committee and people who might be watching in today with regard to that to perhaps tune in around three o'clock if they are interested in hearing someone who has a considerable amount of—

Mr. Chairman: I believe I saw that there will be co-operation between the two presentations from the Heart and Stroke Foundation of Ontario and the Non-Smokers' Rights Association, which together have an hour from 3:30 to 4:30. Within that time will be the testimony that Mr. Sterling mentioned.

Thank you very much for your presentation. The committee is recessed until 1:30 this afternoon. We are starting a bit earlier than we had planned to fit in Dan VanLondersele.

The committee recessed at 12:02 p.m.

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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

SMOKING IN THE WORKPLACE ACT

WEDNESDAY, APRIL 19, 1989

Afternoon Sitting

Page 1 of 1



# STANDING COMMITTEE ON SOCIAL DEVELOPMENT

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Allen, Richard (Hamilton West NDP)  
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Cunningham, Dianne E. (London North PC)  
Daigeler, Hans (Nepean L)  
Jackson, Cameron (Burlington South PC)  
Johnston, Richard F. (Scarborough West NDP)  
Owen, Bruce (Simcoe Centre L)  
Poole, Dianne (Eglinton L)

## Substitutions:

Black, Kenneth H. (Muskoka-Georgian Bay L) for Mr. Carrothers  
Kanter, Ron (St. Andrew-St. Patrick L) for Ms. Poole  
Kozyra, Taras B. (Port Arthur L) for Mrs. O'Neill  
LeBourdais, Linda (Etobicoke West L) for Mr. Neumann  
Miller, Gordon I. (Norfolk L) for Mr. Beer  
Sterling, Norman W. (Carleton PC) for Mr. Jackson

Clerk: Decker, Todd

## Staff:

Nishi, Victor, Research Officer, Legislative Research Service

## Witnesses:

From the Committee of Concerned Tobacco Area Municipalities:  
Van Londersele, Dan, Chairman; Councillor, Township of Delhi

From Alcohol and Drug Concerns, Inc.:

Burden, Karl N., Executive Director

McDonald, Lynn, Social Action Committee; Former MP (Broadview-Greenwood)

From the Ontario Medical Association:

Hilliard, Dr. Neva, Chairman, Committee on Public Health

Rotenberg, Gerald, Associate Director, Health Policy Department

From the Bakery, Confectionary and Tobacco Workers International Union:

Fuchs, Martin, International Representative

From the Non-Smokers' Rights Association and Other Groups:

Mahood, Garfield, Executive Director, Non-Smokers' Rights Association

Ashley, Dr. Mary Jane, Chair, Task Force on Smoking, Heart and Stroke

Foundation of Ontario

Repace, James L., Physicist

Sweanor, David T., Staff Legal Counsel, Non-Smokers' Rights Association and  
Smoking and Health Action Foundation

Goodyear, Dr. Michael D. E., representing Physicians for a Smoke-Free Canada;  
Ontario Dental Association; Registered Nurses' Association of Ontario;  
Hamilton Regional Cancer Centre, Ontario Cancer Treatment and Research  
Foundation; Hamilton Academy of Medicine; Hamilton-Wentworth Regional  
Interagency Council on Smoking and Health



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Wednesday, April 19, 1989

The committee resumed at 1:36 p.m. in room 151.

SMOKING IN THE WORKPLACE ACT  
(continued)

Consideration of Bill 194, An Act to restrict Smoking in Workplaces.

The Acting Chairman (Mr. Kanter): Members of the committee and ladies and gentlemen, we will be continuing this afternoon with our consideration of Bill 194, An Act to restrict Smoking in Workplaces. We have a deputant before us this afternoon from the Committee of Concerned Tobacco Area Municipalities, Dan VanLondersele. I hope I got the name reasonably correct.

You have one half-hour, and in any time remaining after your presentation, members may wish to ask questions. We understand that members of both opposition parties are on their way. I think Mr. Sterling is just outside the door. Please proceed. If they come in, they may have questions as you go on.

Mr. VanLondersele: Thank you. I could hardly hear you. I hope you can hear me better.

The Acting Chairman: Sorry. I will try and speak more loudly. We can hear you, I think, fairly clearly. Please proceed, and your words will be taken down by Hansard.

COMMITTEE OF CONCERNED TOBACCO AREA MUNICIPALITIES

Mr. VanLondersele: I appreciate the committee and the clerk's efforts in allowing me to appear before you. I apologize that not more of our members are present, but due to the short notice, everyone had timetables and I could not entice anyone else to break commitments and come with me.

Our committee was formed in November 1984 and is made up of municipal representatives from some 23 municipalities and three chambers of commerce across the province. These municipalities, in some form or another, are associated with the tobacco-growing industry. Since 1984, we have made countless presentations to both federal and provincial ministers, task forces and committees with regard to the negative ripple effect on our communities from excessive taxation policies and antitobacco legislation.

We have stayed away from the smoking versus nonsmoking arguments in the past and our purpose here is to merely point out, as others have done, that this legislation is contrary to the democratic process and flies in the face of your and our own Ontario Human Rights Code. I believe the Association of Municipalities of Ontario will highlight that point more clearly.

As well, the financial impact of the tobacco industry on both federal and provincial coffers, seems to be ignored more and more with each government action. An independent study done by McMaster University and the University of British Columbia, funded by the Ontario Ministry of Health, asked the

question, "Do Canadian smokers pay their way through the health care system?" I quote, "The answer is an unequivocal yes, and there is plenty left over for governments to use on other services." I believe that tobacco is still the second-largest revenue producer for both federal and provincial governments.

You have received presentations from the Canadian Tobacco Manufacturers Council and the Ontario Flue-Cured Tobacco Growers' Marketing Board concerning among other things recent studies on environmental tobacco smoke. I will leave that issue to those more qualified.

This legislation is another heavy-handed approach by government to regulate the lives of the public. While we are grossly aware of the pressures brought upon you, as politicians, by the antismoking lobby, we ask you to realize that we are slowly being legislated to death.

I understand that Bill 194 has been supported by all three parties of the Legislature but, unlike its predecessor, Norm Sterling's private member's bill, Bill 157, which is a tougher piece of legislation—I understand that even it leaves room for negotiations between smokers and nonsmokers or employers and employees before legislation is imposed. To my knowledge, Bill 194 does not and, therefore, gives no room for any kind of co-operation whatsoever.

Throughout this endless battle, it has been amazing to us why federal and provincial governments have continued to try to appease the antismoking lobby with negative, heavy-handed, Big Brother legislation which is to be imposed on a segment of the public that is using a legal product when the end goal of the antismoking lobby is to legislate tobacco out of existence.

We have maintained throughout that if that is indeed the agenda of the government, then a program outlining compensation for lost income should be instituted, and one that is more far-reaching than just removing a portion of quota from the market.

I would like to briefly quote from our brief to the federal subcommittee of the standing committee on agriculture, chaired by the Honourable Harry Brightwell:

"Compassion has been recently shown in the royal commission's report on seal hunting where the commission recommended that the federal government pay over \$100 million to sealers in order to compensate them for lost income and to develop new sources of income. Like tobacco growers, the sealers voluntarily curtailed the harvest because of dropping pelt prices and diminishing markets resulting from an international lobby effort by environmentalists.

"The intent of the compensation is to recognize that sealers' losses were both economic and social. We want people to be compensated above and beyond their actual loss to reflect the fact that they were hurt a lot more than just their pocketbooks. Awards should be made on the basis of each applicant's sealing income during the years before the industry's collapse and his capital investments in sealing."

A spokesperson for one of the environmentalist groups that campaigned against the seal hunt called the proposed compensation an excellent idea that is long overdue. "This was not any fault of the sealers. We wish them well and hope they get their compensation."

Perhaps the greatest example of a landmark document which establishes

the principle concerning the responsibilities of commitment on behalf of all those concerned in the case of socioeconomic change is the 1965 Freedman report. Mr. Justice Samuel Freedman was commissioned to investigate the imperilled existence of many Canadian National Railway service centre communities in the north and along the Prairies.

These communities were imperilled almost overnight because of CNR's runthrough plan, which no longer allowed its newer diesel engine trains to stop at certain communities to change crews and service the engines. The report found that the cost of significant socioeconomic change in a community must be borne by all the parties involved. Mr. Freedman made it clear that the CNR was wrong to introduce change in the name of profit while simply abandoning the workers and communities that were affected by that change.

Regarding government, he said that if a town collapses because of a lost market for the product of its only industry or if the resource upon which its life depends is exhausted, government responsibility for taking appropriate remedial action is taken for granted.

The decline in the tobacco industry is a significant social change for our communities and for our farmers. It affects the very lifeblood. Following the Freedman principle, we have insisted that justice requires that the cost of adjusting to that change and bringing it about in an orderly and fair way must be borne by all groups involved in the community's life: tobacco farmers, companies, banks and governments.

As outlined in our faxed brief to you on April 12, 1989, due to the short notice, we sent you a short presentation and, again, I appreciate the opportunity of being before you. Nevertheless, we would like to go on record as opposing this legislation for the following reasons:

Even given that nonsmokers do not enjoy secondhand smoke and that there may be a need for segregated areas, this is something that many workplaces have been able to work out through employer-employee relations. Both smokers and nonsmokers are becoming more sensitive to the issue. To force this upon the workplace is more regressive government intervention, creating more problems than it solves, i.e.:

1. Many businesses may not have the space available to accommodate the regulations, causing further burdens on them.

2. Policing. Depending on the people involved, there will be differing standards in various workplaces. Some may wish to enforce, some may not. How you police will probably depend on complaints. If complaints are not received, the policies in that particular workplace are going to differ from one where complaints are registered. The fact that employers may dictate no smoking anywhere cannot be turned around so that employers may dictate that there can be smoking, and that is an inadequacy.

3. Work inefficiency through downtime created by employees leaving their work to smoke in a designated area may be imposed on a workplace that does not have any problem with the issue at present. I understand that the provincial government itself is having difficulty with its own employees having to go outside or going to another place to smoke instead of at their desks, and downtime is a problem. This may well cause disharmony where none existed before.

In short, legislation is meant to be practical, and we believe that this legislation is not.



The Acting Chairman: Thank you very much. Are there questions of our deputant? Any questions at all from any of the members of the committee?

Mr. Daigeler: What is presently happening to the tobacco farmers generally? Are they switching over to a different kind of product or are they totally moving out of the market? Obviously there is a significant change taking place.

Mr. VanLondersele: There is a significant change taking place indeed. There is a myth of alternative crops to service a debt that has been created by the drastic and immediate decline in the tobacco industry, but they are not forthcoming. There are other producers trying alternative crops, for example, the peanut co-operative, which this government has attempted to assist, but there are producers who have not been paid for crops that are two years old, that they sold two years ago.

1350

There are a number of alternative crops that are being looked at and being proposed. The Ontario tomato co-operative is struggling to try and stay alive to meet its commitments. It is a very devastating time in the tobacco communities and still the number of producers that are left is dwindling constantly. That seems to be the product that can somewhat service the debt, although there are many that are not able to service and for one reason or another have got out. I am sure you have heard of those who have taken an altogether different route and left the industry and left the life.

The past four years in tobacco-growing communities have not been pleasant and, although I congratulate the work team that has tried to propose new crops and look at alternatives, the alternative crops that have been proposed are not working out to what they should be.

Mr. Sterling: I think it is important that we hear your position on it. I read last week or two weeks ago that the Minister of Health (Mrs. Caplan) has stated that the goal of the Ontario government is to reduce tobacco consumption from about 30 per cent, which it now is in Ontario, to about 15 per cent by the year 2000.

This would mean, of course, that the need for growing for the domestic market would be reduced by 50 million pounds, something in that neighbourhood. What additional programs do you believe communities as well as producers would need in order to face that kind of dramatic reduction in consumption which is the goal of the government?

Mr. VanLondersele: As I have said, various groups that have represented the tobacco communities and growers have suggested a number of points and programs through numerous briefs and presentations. But if the constant agenda is to eliminate tobacco and treat it as if it were an illegal product, the end result is, if it is indeed illegal, then buy the producer out and have him grow something else. But the present Redux program is a far cry shy of what is needed to compensate the producer for lost income, lost revenue and lost equity in buildings and equipment. The banks are now looking at tobacco equipment at a value of 15 to 20 cents on the dollar.

There is a tremendous amount of lost income, and that is why I mentioned compensation for lost income in my presentation. If the domestic market reduces to that point, one of the proposals that we put forward and I telexed the Premier (Mr. Peterson) about two years ago was to look at a two-price



system. To be competitive on the world market, we are dealing at \$1.20, and that certainly is not a price that can be lived with when the cost of production is near that figure, if it does not exceed it.

We were looking at a two-price system or suggesting that a two-price system be put in place, whereby the revenues from the domestic sales would help exports. Let's say that you sell a product domestically for \$1.70 and your competitive price on the world market is \$1.20; you could take that 50-cent differential and have it come back to the producer to assist in export sales, because export sales will continue.

That two-price system was never imposed. Now the domestic price is increasing gradually; but, as you say, with the demand increasing and the lack of assistance in funding that two-price system, the difficulties just compound.

Mr. Sterling: How much money is being spent by the federal government and the provincial government—I believe it is equally shared—with regard to the Redux program? Is it \$30 million each?

Mr. VanLondersele: No. Mr. Mazankowski came to the Ontario Flue Cured Tobacco Growers' Marketing Board just prior to the last federal election in an attempt to save the seat that was there and proposed a Redux program of \$30 million over four years. That was not \$30 million a year; that was \$30 million over four years and divided in various amounts, not equal amounts.

I do not have the exact numbers in front of me but, to my knowledge, the board and the manufacturers, whoever, lobbied provincial government to come into the tobacco assistance program and bring forth provincial dollars. After a considerable amount of lobbying and efforts on behalf of our member, Mr. Miller, the provincial government kicked in \$3.5 million on top of the federal amount, the total amount for this year being \$12 million to buy out quota.

Mr. Sterling: So the feds are putting in about three quarters of the money then?

Mr. VanLondersele: Yes, but because it is a four-year program, there will be a constant attempt at generating funds from the provincial side every year for the next three years after this one.

Mr. Sterling: I find it absolutely amazing that both levels of government are not assisting to a much greater degree. They both have stated that there is a health problem here and there is obviously a problem in the communities.

Given the fact that if you raise the price, if you add a cent a pack in terms of tax, you can raise about \$7 million or \$8 million in this province, I have never understood why the Treasurer (Mr. R. F. Nixon) would not accept my proposal to him.

Two years ago, I said: "Look. Raise the price on a pack of cigarettes by 10 cents and give it to them, so that we can deal with the problem once and for all. Then we will not have this conflict in our society."

Would you agree that such a proposal would get public support? How often does an opposition politician say, "Put a tax on something"? My party is willing to say that in order to help your communities to properly readjust themselves; not only the producers but the communities themselves.

I think that you should continue to push on that part because I do not

think that \$3.5 million dollars, which comes out to half a cent a pack of cigarettes, and the fact that they are collecting \$600 million or \$700 million is enough help for you.

Mr. VanLondersele: It has been amazing to us. We have petitioned Mr. Grossman, Mr. Nixon and Mr. Wilson. We have suggested that exact policy that you have mentioned to all parties in power.

As I mention in my brief, I certainly understand the pressures that the antismoking lobby is bringing on any party that is in power. It seems that things that are said in opposition are difficult to bring through when they are in power. Exactly as you say, our Conservative member at the time when the Conservatives were in power federally, Dr. Bud Bradley, suggested that 5-cents-a-pack tax be returned to the producer. We suggested that to him to begin with and have picked up on it since.

It is a user-pay tax. If the product is legal and it can be used in this country, then use the revenue that it generates. It is the second-largest revenue producer for both provincial and federal governments. Alberta slaps it up 25 cents a year, and Ontario and Quebec; the federal government has hit us almost annually with drastic increases in taxation.

Take a little bit of that and pour it back into the producers' pockets. Either buy the industry out or make it viable. But this seems like speech out of both sides of the mouth. I am not playing partisan politics with that comment; it is happening with whichever government we are dealing with that is in power.

The Acting Chairman: We have several minutes of questions. We have two more people on the list. I would like to proceed to Mr. Miller.

Mr. Miller: Dan is a councillor from the region of Haldimand-Norfolk in the township of Delhi and we know him well. I appreciate your coming in today to express your views on the bill that is before us, Bill 194, An Act to restrict Smoking in Workplaces.

You raised a couple of issues in your presentation, one about the policing and how that is going to be carried out and how effectively. I do not know, Mr. Chairman, whether we can get an answer to those concerns or not, to the question that was raised by the presentation today.

The other issue was work inefficiency through downtime created by employees leaving their work to smoke in designated areas. I do not know if this has been in effect long enough that we could have somebody comment on how that is affecting the workplace. I think he has expressed the fairness. It may require somebody from the ministry to respond to that.

The Acting Chairman: Mr. Miller, we do have one other questioner on a fairly tight schedule this afternoon. You have put your questions on record. You have pointed out the questions in the brief we have about the space situation and the policing or enforcement situation, and there have been several other questions put before. Perhaps we could leave them with the staff to respond to at a suitable time. Would that be satisfactory?

Mr. Miller: Yes; satisfactory.

The Acting Chairman: Do you have any further questions?

Mr. Miller: Those are the two issues I wanted to raise at the present time.

The Acting Chairman: I would like to go to Mr. Black who is the last person we had on our list for this deputant.

1400

Mr. Black: First of all, let me say that I appreciate hearing another perspective on the problem, even though it may not be one that we all agree with. I should point out to you that we are very pleased our Minister of Health (Mrs. Caplan) has indicated she would like to further reduce the use of tobacco, and we are pleased knowing that we have the full support of members of both opposition parties to promote healthier lifestyles in Ontario.'

One issue you raise, however, that I would like to ask you to respond to is the question of a two-pricing system. In your view, would that be possible in the current situation with the free trade agreement having been negotiated and approved by the federal government?

Mr. VanLondersele: I think that question might be better directed to the man who was here yesterday, Al Bouw, vice-chairman of the board, but to my knowledge, we deal with the United States to the tune of about 25 per cent of our exports and the balance goes elsewhere in the world. Quite frankly, I cannot see how the free trade issue can impose anything positive or negative on the two-price system within the country, because we are dealing with domestic pricing assisting the producer so that he can afford to sell on the export market which has already been determined at \$1.20.

Perhaps I am not knowledgeable enough about the free trade agreement, although I have spoken to it on the floor of the Rural Ontario Municipal Association. But I feel as far as that particular item, the pricing system, is concerned, that is something we are dealing with internally. If we can afford as producers to put that product out on the world market at \$1.20, which is the established competitive world price, then I cannot see how the free trade agreement can affect that one way or the other.

The Acting Chairman: I believe that concludes the questions to this deputant. I would like to thank him on behalf of all members of the committee. Your representations have been useful from the perspective of the communities concerned with the growing of tobacco. Thank you very much.

Mr. VanLondersele: Thank you, Mr. Chairman, and thank you, especially, Mr. Decker and Mr. Miller for allowing me to be here.

The Acting Chairman: We will allow our deputants the opportunities to change places and call on the next group from Alcohol and Drug Concerns, Inc. I have Karl N. Burden listed, and Lynn McDonald is also on the list of deputants. I do not know if one or both of them are going to make a presentation. I understand Lynn McDonald might have had a little experience at the other side or from another perspective in a similar proceeding in another place. Welcome to the Ontario Legislature.

Ms. McDonald: Thank you. It is nice to see it from this angle too.



## ALCOHOL AND DRUG CONCERNS, INC.

Mr. Burden: On behalf of the board and members of Alcohol and Drug Concerns, I wish to thank you for the opportunity to respond to this bill which addresses the issue of smoking in the workplace.

Alcohol and Drug Concerns, for your information, is the oldest and largest not-for-profit preventive education organization in Canada with roots dating back to about 1876. Our present name and philosophy were developed in 1968, at which time we were provincially chartered in Ontario. In March 1987, however, we received our national charter and now offer services to all parts of Canada.

Our primary concern is with the prevention of alcohol and other drug abuse. As such, we target children, young people and those who directly influence them such as teachers, youth leaders and parents. We also endeavour to express the concerns of our membership on matters dealing with legislation and specific social issues which arise from time to time.

In all of our activities, we have long recognized that tobacco is a drug of entry through which people are led into the use and abuse of other chemicals. Tobacco is a highly addictive substance and involves a habit which is difficult and sometimes almost impossible to break. It has been our observation that tobacco users frequently move on to become abusers of alcohol and other street drugs.

Research conducted by the Alcoholism and Drug Addiction Research Foundation among students in grades 7 to 13 in Ontario has dramatically demonstrated the close association between tobacco and illegal drug use. In many years, 1981 being an example, the number of students using tobacco products and those using cannabis were almost identical; for example, tobacco in 1981 was used by 30 per cent and cannabis by 29.9 per cent. Fortunately, with recent drug education programs in the schools, the number using cannabis has declined in the most recent survey, in 1987, to 15.9 per cent compared with 24 per cent using tobacco.

Recent medical research has shown clearly that tobacco use not only endangers the health of the user but poses a serious threat, through secondhand smoke, to those who share enclosed air spaces with smokers. Because of the seriousness of the health risks involved in tobacco use, our organization believes it is urgent that every effort be made to bring an end to the social acceptance of smoking. Indeed, we would go so far as to say that the legal manufacture of tobacco products should no longer be allowed in this country.

A September 1987 issue of the Report on Business Magazine of the Globe and Mail described the devastation caused by tobacco use in North America with the use of two vivid and rather horrifying comparisons. Let me quote from that article:

"In Tobaccoville, the crisis seems far away. In this glistening industrial showplace, it's easy to forget that tobacco causes cancer in one in 10 users. Or that it kills 350,000 people a year in the United States, the equivalent of a collision, with no survivors, of two jumbo jets every single day. Or that it kills 32,000 a year in Canada, as many people as the entire population of a small city like Sydney, Nova Scotia, or Moose Jaw, Saskatchewan."



The public outcry that would follow the collision of just two jumbo jets, let alone two a day, day after day, would demand immediate and effective changes to air safety. An epidemic that would wipe out an entire city of 32,000 people every year would also necessitate an immediate response. We have seen in recent months quick and decisive action taken in relation to much smaller threats to public health such as that posed by possibly contaminated fruit from Chile. Why then do we allow a much greater crisis to perpetuate year after year?

Ms. McDonald: In addressing the matter at hand, we wish to begin by stating that we support the intention of Bill 194 in that we agree that smoking should be severely restricted in the workplace. We cannot, however, support the bill in its present form because it fails to ensure that the workplace will be smoke-free. In particular, we object to subsection 3(1) which states, "An employer may designate one or more areas in an enclosed workplace as smoking areas," because this wording does nothing to ensure the workplace will be smoke-free for other employees.

This is a serious weakness of the current bill which dilutes its effectiveness. We therefore recommend that an amendment be introduced which states that no employee can be forced to work in an enclosed workplace which includes a designated smoking area.

We believe that if this amendment is added, the result will produce a bill with considerable benefit, not only for employees but also for employers, in that by restricting smoking it will begin to reduce absenteeism, reduce maintenance and cleaning costs, reduce insurance premiums and increase productivity. Over time, we believe these benefits will be substantial and will clearly demonstrate the value of restricting smoking in the workplace.

In the event the Legislature is not prepared to amend Bill 194 to ensure that no employee can be forced to work in an enclosed workplace that includes a designated smoking area, then at the very least provisions must be made to allow municipalities to pass bylaws that will give additional protection from secondhand smoke to employees.

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Mr. Burden: To conclude our brief, we should note that Alcohol and Drug Concerns is in essential agreement with the opinions expressed by the other health agencies which have spoken to you regarding this bill. We are also willing to support a total ban on smoking in the workplace if and when the Ontario Legislature is prepared to take such a progressive and intelligent step forward in the interest of public health. We understand such bans are already working in some federal buildings in Canada and also in the city of Vancouver.

Thank you for the opportunity to express our support for the restriction of smoking in the workplace.

The Acting Chairman (Mr. Kanter): I would like to thank our deputants for a brief brief and ask members of the committee if they have questions or comments.

Mr. Allen: I would like to thank Alcohol and Drug Concerns for coming this afternoon and for adding its voice to the opinions we are receiving on Bill 194. The message you give is pretty direct and quite conclusive, not just with regard to the issue of smoking and health, but also,

I think, with regard to Bill 194. But I want to be a little clearer about the latter.

In the first paragraph on the last page, if the Legislature were not "prepared to amend Bill 194 to ensure that no employee can be forced to work in an enclosed workplace that includes a designated smoking area," etc., I am sure you do not mean to imply by that that it is open season on employees who are not prepared to comply and therefore may be subject to reprisals by employers or by dismissal. In other words, I am not sure what you are implying by the alternative as an amendment here.

Ms. McDonald: What we are proposing is that the bill should have a very specific section in it saying that no employee can be required to work in an enclosed workplace that includes a designated smoking area. The best thing to do would be to say, "No smoking in the workplace," obviously, and that has been successful in other places. But at the very least, you have to give protection to employees.

What we are worried about is that this bill could entrench a very bad practice. It has only been relatively recently that smoking in the workplace has been allowed. When you think of hundreds of years of history, it has really been only since the Second World War that it has become common to smoke in the workplace, and become accepted. I understand that in common law the employee has a right to a safe and healthy working environment. Legislation ought to be in line with people's ordinary rights as employees. This is not.

A practice has grown up by which people smoke in the workplace. It is not legislated. What this bill risks doing is legislating, entrenching, what is a very bad habit. It is better to get rid of the bad habit than to entrench it.

Mr. Allen: Are you going so far as to suggest, as one presenter did yesterday, that this bill virtually amounts to a smoker's rights bill because it does in fact say that smoking in an enclosed workplace is legitimate if the employer simply allows the 25 per cent area in which you can do it?

Ms. McDonald: It could be interpreted as legislating smokers' rights, yes. If this room were a workplace, a quarter of it could be designated a smoking area with no separate walls. The middle part could be designated. You could have fans blowing the smoke to all employees at every work station. That would be legislated; a very backward piece of legislation. Obviously, employees would fight it and you would have all kinds of grievances. You would have litigation. Who wants that?

Mr. Allen: In your view, as this legislation stands it is a very bad precedent?

Ms. McDonald: Yes.

Mr. Allen: And we would be better not to have it, if it were to go forward unamended?

Ms. McDonald: If it is not amended, we think it would be better not to have it. People would rather have things cleared up in legislation. Employees will obviously start to use their common law rights and to use other labour legislation. Dangerous substances in the workplace, for example: You

are going to start seeing other cases taken if there is not legislation in place to deal with the very particular problem of smoke.

Mr. Sterling: Thank you very much for coming and talking about the addiction problem of tobacco, because although that has been talked about during our hearings, I do not think it has been driven home in terms of the problem that tobacco not only rains on people who are addicted to it, but there are the subsequent effects of it.

Have you seen the most recent research from Dr. Lynn T. Kozlowski and Dr. Roberta Ferrence with regard to the problems of withdrawing from addiction to nicotine? Are you aware of that?

Ms. McDonald: I do not know if I have seen the particular article. Are you referring to the 10-per-cent-success figures?

Mr. Sterling: Basically, the conclusion Dr. Kozlowski comes to, and he has published this in—he works with the addiction research foundation of Ontario. Basically, his conclusion is that smoking is as hard to quit as alcohol or drugs are to an alcoholic or a drug-addicted person.

I think that in bringing forward legislation like this, it behooves the government to deal in a reasonable fashion with people who are addicted, and therefore I think there is some obligation on the state, the Ontario government, to provide help to get off to people who are addicted, if in fact they are facing the situation in the workplace or in public places, etc. I have not heard many of the presenters talk about government involvement. I know the Canadian Cancer Society and the Lung Association are involved with it. In fact, the Ontario government has done that for its employees, but we have not talked about what should be there for the private sector.

Mr. Burden: We certainly agree with the addictive quality of the chemical, and the research you are referring to is certainly a common experience for us to see. There are very, very few people who are tobacco users who are not addicted to the substance, so in that sense, yes, we need help for those people. If that could be part of the legislation, so much the better.

Ms. McDonald: But that does not mean you should legislate a smoking workplace; absolutely not. The question whether there should be smoking areas near the workplace I guess is one we could debate, but not at the workplace, not when passive smokers can become ill and indeed get lung cancer and die from other people's smoke.

Mr. Sterling: In the same issue of the addiction research foundation bulletin of March 1989, for those people who think we are being draconian in terms of how we deal with the smoking issue, evidently in Constantinople in 1633, Sultan Murad IV had smokers beheaded, or alternatively, they were drawn and quartered. "Soldiers caught smoking had their hands and feet crushed and were left helpless between the lines. One Romanov czar was somewhat milder. He merely had smokers' nostrils slit." In feudal Japan, smokers were subject to fines, imprisonment or confiscation of property.

But in no case has anyone ever been able to eradicate the habit. I think that is one of the problems in saying to make it illegal and snuff the whole problem out at once, dealing with it that way. The practical thing is that it



will not stop totally, regardless of what rules we put up. What we are trying to do is to help the people who are affected in a secondhand way.

Mr. Burden: Most of the efforts of our organization are directed to reduction of demand. We understand that simply by legislating something out, it does not disappear. You have to change the interest of the individual.

Ms. McDonald: If I could just add to that, it is interesting however that this kind of legislation—that is, tough legislation, not with this loophole in it—has been very successful in other places. For example, in Vancouver, a year ago when we were looking at this at the federal level, the Vancouver medical officer of health said they had never had a prosecution or a grievance. It actually worked. They banned it; they got rid of it.

The reason the manufacturers are fighting it is because people do reduce their consumption. It is not that they make up for their not being able to smoke at the workplace by smoking more after hours. It actually does induce some people to quit. So legislation can have a good impact.

The Acting Chairman: Mr. Sterling, shall we ask the members of our ministry to check into some of the enforcement provisions? I think you made the point.

Mr. Black: I noticed Mr. Miller blanched at that point.

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Mr. Daigeler: I certainly agree with you that the legislation can have an effect so that people will in fact quit smoking. It has a leadership role. I think that is why the government has introduced it.

Specifically with regard to your brief, however, I have a bit of a problem with one particular assertion that was made not only by yourself, but by others as well this morning. You made it even stronger than others did. You are saying, "We have long recognized that tobacco is a drug of entry through which people are led into the use and abuse of other chemicals....It has been our observation that tobacco users frequently move on to become abusers of alcohol and street drugs."

Quite frankly, that strikes me, first, as a very strong statement, and second, other than the brief reference you make here to two statistics that seem to be related, I do not see that justified. I think that is a pretty strong statement and I think you would have to put forward facts that would corroborate that statement.

Mr. Burden: At this point, I am doing research on it but I can certainly tell you that over the 10 years I have been involved in this field, it has certainly been my experience. As well, prior to my entry into the addiction field I was in education and dealt with young people. It has been my experience that young people start with two substances that are socially acceptable, tobacco and alcohol, and that from there they move on into other substances. Very rarely do I find a person who goes into another drug without first starting with these socially acceptable drugs.

Mr. Daigeler: I guess my question here is, what is the cause? Is it the tobacco that leads them into the other thing, or are there other factors that are much more important?



Mr. Burden: That is a very complicated—

Mr. Daigeler: That is why I think we should not make these kinds of statements so quickly. It is a serious matter. I think there could be many other factors that lead to abuse of alcohol or street drugs and not tobacco.

Mr. Burden: I quite agree. It is a complicated situation but I would not stand back from my comment. I do believe there is a definite connection.

Ms. McDonald: Perhaps I could just add to that. It is not just a recent finding either. I was research associate for the LeDain Commission of Inquiry on the Non-Medical Use of Drugs which reported back around 1970-71. The patterns of use that were examined at that point for the whole country, with very extensive research, found similar patterns of tobacco being very early on. One can debate whether it is causal or not, but certainly those patterns have been very well established by researchers.

Mr. Daigeler: I think it is a very interesting question and I do not deny the pattern, but to jump from that to cause and effect, I think that is where I would be very careful. I would welcome further investigations into this. My impression—yours are obviously impressions as well—is that there are much more serious factors involved than tobacco, attitudinal, environmental, social or whatever, that make people smoke and then also abuse. Why is it that some of the kids or some adults pick up these common habits and others do not? I think that is when one is interested in changing people's attitudes. That is probably what one would have to look at.

Mr. Burden: I think there is also the possibility that those who smoke tend to gather together and have similar problems and so on, so it does add to their problem. But as I say, I do not want to stand back from that statement. I do see a connection. It may not be the only connection, but I see a close connection.

Mrs. Cunningham: There was one of the questions that had to be answered—it appears on a document in front of me—"Why did the government choose to legislate a minimum standard rather than leave it to the municipality?" The response is, and I am wondering if you would react to this response, "The regulation of working conditions is a provincial responsibility and the government has determined to ensure that at least 75 per cent of the area of all workplaces covered by the bill shall be smoke-free."

Ms. McDonald: We would agree that it would be better for the province to legislate. The idea that it would be up to the municipalities on a very patchwork basis, with each one having to work through the problem itself, is cumbersome and obviously would take very much longer. But we would at least like to see the municipalities have that opportunity if this Legislature is not going to come up with a decent bill.

Right now, the idea of legislating a 25 per cent workplace that is smoking, which in effect could happen with this—this is just such retrograde legislation. It is entrenching very bad practices that exist. It is not minimum health legislation. It is legislation that will ensure that some people will become ill and some will die of lung cancer from a substance introduced to the workplace. This is not minimum health legislation. This is atrocious.

Mrs. Cunningham: So you really do not agree with this bill, that 75 per cent of the area of all workplaces covered by the bill shall be smoke-free.

Ms. McDonald: No. One hundred per cent of the workplace should be smoke-free. If you are going to permit any smoking at the workplace it must be in separately ventilated, separate places. There should not be one employee who is subject to other people's smoke.

Mrs. Cunningham: You would be interested—you can react to this because I am supposed to be asking questions—that we had a call this morning from a woman who is pregnant. Right now, her boss has decided that no one will smoke in the workplace, so they go outside to smoke, but she has been told that after the baby arrives people can resume their smoking again. Her concern is that with this legislation, the boss could not even have told people to go outside to smoke, that they would have had this piece of legislation and all he would have had to do was say: "25 per cent of this is smoke-free. You can smoke over in the corner."

She feels that with this legislation it would be worse for employers who at least had the right to tell their people what to do, because there is no legislation right now in this particular municipality. Would you like to respond to that?

Ms. McDonald: Without legislation, people would have to go to court in order to enforce their rights. She has a common law right to a safe working environment, but her baby is going to have been born and may be in elementary school by the time she gets her rights established by having to go to court, which is why it needs to be legislated.

I agree that this bill in place, as it is right now, would not help her.. It would still be up to the goodwill of her fellow employees. Then she has to go and jolly them along and appear at a committee meeting and hope they will go along with her. But she does not have the right, according to the legislation—she has it in common law but she does not have it in the legislation—to a smoke-free workplace.

We know right now that pregnant women are being forced to work in smoking environments. It is one we did not mention in our brief; no doubt other people will. There is harm, not only to the woman but to the foetus as a result.

Mrs. Cunningham: It was quite a shocking example. I also talked to her employer. But anyway that is why we are all here, to try to solve a problem, so we are happy you have drawn this one to our attention.

The Acting Chairman: If there are no further questions, I would like to thank the deputants from Alcohol and Drug Concerns, Inc. Thank you. The committee will resume its session. The next deputant I have listed is from the Ontario Medical Association committee on public health, Dr. Neva Hilliard, chairperson. Dr. Hilliard, you appear to be accompanied by someone else. Perhaps he could give—

Dr. Hilliard: My colleague is Gerald Rotenberg, associate director, health policy, at the OMA.

The Acting Chairman: Dr. Hilliard, as you may be aware, you have

one half-hour to make your presentation. We look forward to any time that remains after your presentation for questions within that half-hour period.

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#### ONTARIO MEDICAL ASSOCIATION

Dr. Hilliard: Thank you very much. In introducing myself, I am chairman of the subcommittee of the OMA, the committee on public health. The Ontario Medical Association, as you are aware, is a volunteer medical association that represents approximately 80 per cent of the physicians in Ontario. I also come to this meeting today as an occupational physician, being in the workplace on a day-to-day basis dealing with health, safety, and environmental issues.

First, the committee on public health has been addressing the smoking issue for many years. It has been one of our major concerns in dealing with public health risks in smoking. Over the years, through the committee and through the council, we have made numerous recommendations. In particular, in the workforce, we dealt very early on, in the early 1980s, with smoking in airlines, and in the more recent years, in schools, in hospitals and in our own workplaces as physicians, and more recently, in the public sector in terms of even the individual's home.

We do recognize the significance of the problem and certainly, as an occupational physician, having to advise companies on a day-to-day basis on implementation of smoking policies and dealing with the workers themselves in dealing with the effects of smoking, it is not an easy task that you are about to address.

In relation to Bill 194, the Ontario Medical Association endorses the government of Ontario's efforts in introducing Bill 194. However, we feel it has too many exemptions to be effective.

Clearly, cigarette smoking is a leading cause of preventable death and disease. I am sure, over your deliberations, you have met with numerous experts in the area of epidemiology and have all the facts and figures in relation to cigarette smoke and its cause of death and disease in the human population.

Notwithstanding, however, the health of smokers, studies now show that the health of nonsmokers is also adversely affected. Evidence is available to show that those exposed to secondhand smoke are at an increased risk of developing lung cancer. Individuals with respiratory disease, allergies, cardiovascular disease and many other problems will have their conditions aggravated by exposure to tobacco smoke.

Studies also show that smokers use the health care system up to 50 per cent more than nonsmokers. They lose more time from work and they contribute more to long-term disability costs than nonsmokers. Certainly, in today's economic society and our concerns about the cost of our health care system, this type of significant cost cannot be negated.

There is no doubt that smoking in the workplace is costly in terms of ill health, as well as lost productivity and higher health insurance costs. In the deliberations here I think we have to look at economics in the business



world. I think that should not be forgotten in your deliberations, in getting comments from these people as well, because it is a major concern.

The Ontario Medical Association, in principle, endorses a total ban on smoking in the workplace. Bill 194 is an important step or an effort in the evolution of the development of a nonsmoking work environment; however, it is too limited to be effective at all.

Granted, the bill allows for one quarter of the work area to be declared as a smoking area. There is no requirement for separate ventilation. My colleagues before me have gone into this in terms of the inadequacy of this type of documentation and legislation. It is certainly meaningless in trying to protect the nonsmoker in the workplace.

We are also concerned about the exemption, in this legislation, of areas in which the public is served. You have not considered that. Another major deficiency is the lack of the provision for a nonsmoker to object to smoking in his or her work environment and the absence of a mechanism for resolving the disputes.

The OMA congratulates the government of Ontario for banning smoking in all government of Ontario workplaces as of March 31, 1989. Indeed, this committee may be interested to know that the OMA buildings and all OMA functions have been smoke-free since January 1988.

Clearly, the government of Ontario, by placing its workplace as smoke-free, is taking a major initiative in addressing this important issue. However, my question is, do not all workers in Ontario deserve the right to a healthy workplace? Why should government workers be so privileged compared to a small 10-man workforce in a little foundry or a metal recovery plant?

The OMA requests equity in a healthy workplace for all workers. We therefore recommend that the government of Ontario support a complete ban on smoking in the workplace. Recognizing the complexity of this, interim measures certainly can be implemented in an incremental manner in order to provide designated work areas that are separately ventilated, where you have work stations or indeed eating facilities that are separately ventilated, and supplying other facilities where there is total nonsmoking.

As part of the implementation process in a "no smoking" policy, we feel that it would be important to include in your legislation provisions for employers to assist workers in smoking cessation programs.

The Acting Chairman: Thank you, Dr. Hilliard. Are there questions from members of the committee?

Mr. Allen: I want to thank the Ontario Medical Association for coming and reiterating its long-held position with regard to the question of smoking and personal and social health in our society.

I have a couple of questions. On the one hand, you do use the adjective "important." "Bill 194 is an important step in the evolution of a nonsmoking work environment." Then you go on to some paragraphs that make it fairly plain that do not really think it much of a step at all. So I really want to ask you, are you prepared to eliminate that adjective in that part of the sentence and tell us flatly that the legislation really is not worth while unless it in fact is amended in the directions that you indicate?



Dr. Hilliard: Absolutely. I think the discussions the Minister of Labour (Mr. Sorbara) has developed and evolved in this is important. I think the committee meetings, in viewing all sides, are important, but it is just a process and indeed it is a bill that should not proceed beyond this point.

Mr. Allen: Could I infer from some of your other remarks that you would endorse some attempt to make it plain in this legislation that where there are some exceptions with regard to serving the public, it should be made quite clear that in any case, institutions such as day care, nurseries, schools, hospitals and health facilities should all come under the purview of an act that exercises a ban upon smoking in those places?

Dr. Hilliard: Absolutely.

Mr. Allen: Thank you.

Mr. Miller: Doctor, I was wondering if you have ever had the opportunity of maybe prescribing that smoking might be good for one of your patients who has been a smoker. Has that ever happened to you while you have been practising?

Dr. Hilliard: No. However, I recognize the problems alluded to by colleagues prior to my presentation. There are individuals who are cross-addicted to other drugs, in particular alcohol, and who are heavy smokers. It is very difficult for them to deal with both addictions at one time. You often find that these individuals will deal with one problem and then once that has been accomplished, start dealing with the other. But there has never been a situation in my practice of medicine where I have recommended cigarette smoking for therapeutic reasons, although some people do say their bowels do not start working until they have the first one in the morning. I can help counsel them on alternative methods.

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Mr. Miller: I guess the second thing is that we live alongside the Six Nations reservation and we have a tobacco museum in Delhi. This was a well-educated Indian and he indicated the Indians have smoked for a long while and that is the way they communicate with their maker, particularly with the pipe. He also went on to say the white man has not been able to handle it because he smokes too much, and I think that is what you are saying, but is there maybe not a happy medium? Maybe in some cases it is beneficial and relaxing.

Dr. Hilliard: A very good point, and I appreciate it, but no. At one point we were looking at the low tar and the low nicotine cigarettes and what is the comparison in cancer rates in terms of the incidence of lung cancer and other kinds of upper respiratory diseases in relationship to the nonfilter, heavy nicotine and tar. Studies are now starting to show that even one cigarette a day is too much.

Might I add that what we are also seeing now is indeed the trend that the majority of people now are nonsmokers. Studies vary; anywhere from 30 to 40 per cent of people now are smokers. In a recent survey I have done in one area of one plant, 32 per cent were smokers, and this is a blue-collar, smoking environment, not your government office buildings.

I think that is pretty good. I think the trend in the population is on the downslide, which is important in looking at legislation, because as you

get the younger population coming through, the majority of them—hopefully many, many more—are going to be nonsmokers, so you are going to be looking at a very few affecting a large population.

Also, what we are seeing is that if there is a trend on the increase, it is within the young female population. This is something we are working very hard on in the public health area in education.

Mr. Miller: Okay. There is a reduction, then. Can you notice any difference in the health? I know they have always zeroed in on a particular number of deaths they claim tobacco has caused. Do you see a reduction? There has been a downturn in the use of tobacco now for some years. Can you see that taking hold in the protection of the public?

Dr. Hilliard: When we look at these types of statistics, we look at epidemiological data and the trends; because the long-term effects are looking at 20, 25, 30 years' exposure, we have not been able to catch up to that yet.

What we have shown is that indeed in the female population we were always behind the male population in terms of lung cancer, with the greater cause of death being breast cancer. Now we have approached the point where lung cancer is taking over from breast cancer, which is solely related to the habit of cigarette smoking.

Not trying to get away from that, but when you look truly at the workplace, you are also looking at potential synergistic effects; coexisting problems. Certainly asbestos exposure and silica exposure are two of the well-recognized occupational diseases which are influenced by a person who smokes cigarettes. Their rate of death from various causes is much more rapid than nonsmokers'.

Asbestos and silica are not as prevalent in the workplace as they used to be, but what are we into now that is prevalent? We are into a lot of high-tech industry. Solvent is ubiquitous in industry; everywhere you go there are solvents. An individual who is working with solvents and smokes a cigarette contaminates the cigarette and breathes in the solvent.

Individuals into soldering: There is a tremendous amount; everywhere you go in industry there is soldering. In clean industry there is soldering. Most of that solder contains 38 to 40 per cent lead. An individual who is using this and picks up a cigarette inhales the lead dust and you get into lead toxicity as well. Particularly in young women, when you are getting into even a smaller, lower dosage of lead, it will lead to foetal toxicity.

You have all of this you have to look at in terms of smoking in the workplace, notwithstanding, of course, the nonsmoker who is forced to work. We all have to work; we have no choice. I have a choice whether I go into a restaurant where there is someone smoking; I do not have to go there, but I cannot make that choice in terms of work. I have to go. Should I have my health affected by a co-worker just because there are four of us in a room and, at 25 per cent, one of us can smoke? It does not make sense.

Mr. Miller: I guess the last question is that one group, the Canadian Tobacco Manufacturers Council, was before the committee and indicated that there is no conclusive evidence that environmental tobacco smoke constitutes a serious health hazard for the nonsmoker. Therefore, the rationale for Bill 194 is neither scientific nor medical.

Dr. Hilliard: It depends on who you read, actually. Here is an article published in 1987 indicating that nonsmokers had a risk of close to one in 100,000 of lung cancer.

Mr. Miller: Again, we have had some experience with cancer in my own family. It was not related to smoking. Understand that the last thing I want to see is for anybody to have to go through that kind of death, but I do smoke and I have reached the pensionable age. I have not had to use drugs to any extent. I am not sure if it is the little bit of nicotine I use or if I have been lucky; I am going to touch wood. I am just a little concerned that we have gone a little far and we need a balance. I appreciate your comments today.

Mr. Daigeler: Thank you again. We obviously appreciate your presentation. However, you, like several other presenters, have made a statement with which I, as a member of the government side, obviously have some serious difficulty. You are saying that if you cannot get 100 per cent, it would be better not to have the bill at all. I personally feel that this approach is kind of making the perfect the enemy of the good. It was repeated several times that this legislation is the first among the Canadian provinces, so obviously we must be doing something right; otherwise, the other provinces would have done this a long time ago.

People have made the point that they are looking at Ontario and following us very closely, because I think they realize that this is a move in the right direction; certainly forward.

I can appreciate that you would like it to be even stricter, but personally, I have difficulty with saying that if you cannot get that we should not have it at all. Even if it is not 100 per cent, I think it goes a long way towards improving the situation for everyone. I just wonder whether you have any comments on that. This would be more of a statement than a question.

Dr. Hilliard: I do, actually. I appreciate where you are coming from and I appreciate where the business world is coming from, because that is what we are looking at. We are looking at legislating the workplace, employers and the business world even more. They have legislation coming out their ears, and the cost of that legislation is tremendous.

To tell an employer that he has to have a separately ventilated room and he also has to supply other rooms for workers who are not smoking who do not choose to go into that area—it is very difficult to revamp the whole ventilation system in a plant. It is extremely costly. Are you going to get compliance? Likely not.

Over 80 per cent of your workplaces out there are small businesses. They are the small man. They cannot afford millions of dollars, nor can they afford litigation, recognizing that individuals who are exposed to secondhand smoke and develop a health concern now have rights under the Workers' Compensation Act. They can become compensable. They can go off on full benefits until either they get supplied with a healthy workplace or get rehabilitated back into an environment that is safe for them.

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You also now have the workplace hazardous materials information system legislation, which is putting further problems into it. I also see there that you have workers who are learning a lot more. We are out there educating them.



We say, "All right, we'll provide a certain amount of your work area smoke-free." Municipalities, such as the city of Toronto, the city of Etobicoke and the town of Markham have these in place now. At least there is an avenue of complaint, which Bill 194 does not have. If there is a complaint it has to be addressed, and if there is no resolution it is in favour of the nonsmoker.

If a worker who is definitely affected by secondhand smoke has to submit a written complaint, he or she feels threatened by going to the supervisor or even, indeed, to the manager of the plant and saying, "I'm submitting a complaint." They feel threatened. In a lot of instances they are black-marked and when the opportunity comes they are slid out. It is very difficult to go halfway in a lot of small plants. Even though you see the reality of the difficulty, as often as not a "no smoking" policy, once the evolution progresses to that, is a lot easier.

Mr. Black: We had some discussion earlier this afternoon on the question of whether nicotine in tobacco is a gateway drug for the use of other substances. Do you have a view on that?

Dr. Hilliard: My personal experience on that is that those individuals who stop smoking are usually not cross-addicted in other areas. The ones who have the hardest time stopping smoking are heavy users of alcohol. I have had a fair experience from large corporation to small plant, and in industry I find that it is harder for the nontrained worker. His culture is different, the workforce is different and the whole culture is much more conducive to smoking.

Mr. Black: Let me follow up on that. There is some thought that one learns the skills of smoking marijuana, for example, by first smoking tobacco. Have you seen any evidence to either support that theory or question it?

Dr. Hilliard: Apart from occupational medicine, I do on the side a general practice with a women's clinic through Women's College Hospital and I deal with a lot of young people. I see young women experimenting with cigarettes, alcohol and drugs at a very early age, but I have not been involved in the drug abuse therapeutic realm to give a more experienced opinion. I do see it in young women and I do see that at age 14 or 15, yes, they smoke maybe two or three cigarettes a week. When asked when they smoke it, it is on weekends or after school or at the dance or whatever. You see that evolution.

Mr. Sterling: I just wanted to follow Mr. Daigeler's comments portraying what some of the health associations have said to us: "We won't support this if we don't get 100 per cent." Quite frankly, after hearing a lot of the evidence and in terms of experience, I am not sure we are not going back 25 per cent from where we are now by passing Bill 194 in its present form.

In terms of these amendments, I do not look at this as improving something, going up the scale from where we are now. The way I am looking at Bill 194 now, after hearing about the situation Mrs. Cunningham was talking about and after hearing Mr. Borg yesterday, who is a consultant in dealing with these matters, I am coming to the conclusion that this is more of a smokers' rights bill and that we are going in the wrong direction. Therefore, the attraction of passing this bill, in my view, is that it is a social statement to the people that this is an unacceptable social behaviour at work.



I do not know. Am I portraying that correctly?

Dr. Hilliard: Mrs. Cunningham's example is one I see on a daily basis. Indeed, you are giving smokers the right to say: "Yes, we can smoke in the cafeteria. Yes, we can smoke here or there." In industry, with the right-to-know legislation and the Minister of Labour bringing down WHMIS, you are getting into areas where there is no smoking designated because of other hazards in the workplace, i.e., flammable goods and so on. But in terms of smokers' rights, yes, as I see it, in common areas, in particular in plants where there is only one cafeteria or just a male or female facility, a washroom facility, smoking is allowed and so on.

Mr. Sterling: Switching to another subject, there has been a lot of argument relating to your profession in particular. It is unfortunate that Dr. Andrew Pipe could not have been with this committee this week. I do not know if you know Dr. Pipe from Ottawa who is very active in Physicians for a Smoke-Free Canada, which I believe is the name of that particular group. He appeared when my private bill was before the Legislature, Bill 70, which dealt with the same issue. In fact, when Mr. Daigeler and other people say this is the first time legislation has been before a province, they are wrong. This is the second time, because my bill of December 1985, three years ago, actually dealt with this and dealt with it in a more meaningful manner, I would argue.

Mr. Black: That's an unbiased opinion.

Mr. Sterling: Actually, it got all-party support at that time, as Mr. Black may or may not remember.

Getting back to the question, one thing I have difficulty with is the argument about medical costs associated with the ill-effects of tobacco and that kind of thing versus the revenue side. The revenue side is \$600 million to \$800 million, I believe, at this time. In talking to physicians on an anecdotal basis, an anaesthetist who is working with Dr. Keon in Ottawa on bypass surgery, for instance, tells me that basically everybody who hits the table for the bypass operations is a smoker.

Is there any attempt by the medical profession or the system to try to quantify what the real costs are?

Dr. Hilliard: It is certainly a very difficult issue. In doing that, you have to look at all the ramifications of the health care of the individual in terms of regular visits to the general practitioner, the laboratory investigation, the hospital admission when they eventually get to the need for surgical intervention, the health care costs in terms of medication and so forth. It is very difficult.

Certainly, I do not have that data available right now, but there are some analyses that have taken place where they have taken an individual, for example, and followed that individual and have been able to project all the costs over a 20-year or 30-year period. There is some isolated data, but to quantitate it on a general national or provincial basis is very difficult.

Mr. Sterling: Having been involved in an advocacy position with regard to this issue over the past three years, one of the things that does seem to get out is smoking as it relates to lung cancer; that if you are smoker, you have a 1-in-10 chance of getting lung cancer, which is a tremendously high risk. But the other part, that smoking causes more deaths from heart disease, does not seem to get out there. I guess that is why I

related it to bypass operations and that kind of thing, notwithstanding that the Heart and Stroke Foundation of Ontario does everything it can to talk about that.

Dr. Hilliard: Yes, that is right. In the workplace, I think we do not only want to focus on the smokers and therefore smoking cessation, but also on the effects on the nonsmokers of the secondhand smoke, because you have a large number in your workforce who have other existing diseases, allergies, upper respiratory problems, asthma and so forth. Even contact lens wearers can be adversely affected by second-hand smoke. This is the focus that we want to look at as well.

If you are a smoker, yes, you have the right to smoke, but do you also have the right to affect the health of other individuals? I think this is what we need to look at.

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Mr. Sterling: I would really like to—

The Acting Chairman (Mr. Kanter): Mr. Sterling—

Mr. Sterling: Yes. I just have one statement that is going to take me half a minute.

Mr. Sterling: I would really like to see the medical physicians take an active role in monitoring this in some way. I think you are in the best position to come up with those kinds of proposals, but it is important, as health care costs escalate, for us to know what in fact this is costing us.

The Acting Chairman: We are approaching the end of the half-hour for this deputant. We had two other people who indicated an interest, Mrs. Cunningham and Mrs. LeBourdais. Perhaps if you had one brief question to each person.

Mrs. Cunningham: Very quickly, we are in a political environment here and we have to go for what we think is the best in putting forth an amendment. Obviously we are going to try for a ventilated area. I would like you to respond to this. I was sorry to hear Mr. Daigeler say he was a member of the government side, because I think this issue is too important to have sides on. Second, I think one of the other statements he made was, "We are doing something right in showing some leadership." I think that is the saddest part of the legislation because I think people will now walk into rooms where a quarter of the space is set aside and think they are in a safe environment. That I think is the worst thing we could be doing. I just wondered if you could respond to that in any way.

Dr. Hilliard: I totally support it, with individuals hoping that this legislation will provide for a healthier workplace and indeed it is not.

Mrs. LeBourdais: I just really wanted to make a comment for the record. I had not had any specific questions because I concur with you 100 per cent. Perhaps just by way of a balance to my colleague Mr. Miller, I have yet to have my first cigarette. I know that any damage to my lungs has come from others and none has come from myself.

I also know that when a child is born, they are given what I believe, and correct me if I am wrong, is an Apgar score, the top of which is a nine based on a quick general overview of the birth of the child, its colour, its conformity, the fact that it has all the parts expected, etc. I know that,

although I only have one child, my child received a nine on the Apgar test, which I think partially is due to the lack of perhaps alcohol as well, but certainly the absence of tobacco smoke, etc. I think more children, if their mothers abstain not only from directly smoking but from any of the side-effects, would have the good luck to start off with a nice high Apgar score.

I think it is unfortunate that the medical community has not given more direction to the public, direction by way of example. I think we know of too many prominent surgeons who daily go in and do work to cure the side-effects of smoking and yet as soon as that surgery is over, they are off for another cigarette themselves. I really think it is time that unfortunately we stop bowing to the rights of smokers. In a sense it is time that they put down the gauntlet and played dead because, statistically speaking, unfortunately the statistics tell us that is where they are going to be.

Dr. Hilliard: If I could just respond briefly on that. The committee on public health, through the Ontario Medical Association, have been advocating to our profession to be examples in this for many years. Certainly banning smoking in the offices of the OMA is a good step. We have been trying and making recommendations to hospitals for many years to ban smoking completely. It is starting to be a trend now, but again politics plays heavily in these jurisdictions. You are quite right that the public health committee has continuously urged physicians to be examples in this area.

The Acting Chairman: I would like to thank Dr. Hilliard and Mr. Rotenberg. Clearly your brief submission led to many questions on the part of many members of the committee. Thank you very much.

The next deputant is Martin Fuchs from the Bakery, Confectionery and Tobacco Workers International Union.

#### BAKERY, CONFECTIONERY AND TOBACCO WORKERS INTERNATIONAL UNION

Mr. Fuchs: Mr. Chairman, ladies and gentlemen of the committee, my name is Martin Fuchs and I am an international representative of the Bakery, Confectionery and Tobacco Workers International Union.

Our union has some 14,000 members in Canada and more than 3,000 of them work in the manufacturing sector of the tobacco industry. The BCT thanks the standing committee on social development for the opportunity to state our views and our concerns.

We have some very serious concerns about this legislation and we have some suggestions to make.

First of all, I have to say how surprised and disappointed we were that, to our knowledge, there was no consultation with labour before the introduction of this bill. The introduction of Bill 194 meant, to us at least, that the government had decided that environmental tobacco smoke is a hazardous substance that must be regulated. The Ministry of Labour has established a joint labour-management steering committee on hazardous substances in the workplace. To our knowledge, this committee was never consulted or even informed that the government has the intention to regulate smoking in the workplace.

If the minister and the government are really concerned about the protection of workers, then Bill 194 is a very strange way of doing it. Bill



194 clearly discriminates against some employees, does not provide for real consultation with the workers and does not deal with the real issue.

The labour movement is opposed to all forms of discrimination in hiring and promotion and in the determination of working conditions. We thought that all major political parties shared that view, but over the last few months it seems that all major political parties, in government or out, have decided that some workers can and should be discriminated against because of a lifestyle decision. We think that is wrong.

Bill 194 also closes the door to the normal bargaining process on working conditions by imposing a solution before the process even begins. That is wrong too.

By concentrating on one so-called risk and ignoring the real ones, Bill 194 sets a double standard for the health of workers. We think it should be opposed by any group, whether it is labour, management or parliamentarians, that is truly concerned with the fairness in the field of occupational safety and health.

If the aim is to protect workers, then we believe that the workers are entitled to protection from all pollutants, not just three per cent to five per cent of them. What the workers of Ontario need is a clear and comprehensive set of standards on indoor air quality.

Our union's interest in and promotion of indoor air quality standards is not new. In researching this issue of environmental tobacco smoke, what we found is fascinating and simple. As I am sure all members of the committee knew, there are hundreds, if not thousands, of cases of sick buildings in the United States and Canada. What you may not know is that in the majority of cases, the finger was pointed at tobacco smoke as a probable cause for the building illness. In many cases, smoking was banned, but the illness continued. Then the investigators were called in.

What did the investigators find? That tobacco smoke was a significant pollutant in about three per cent of the cases. Tobacco smoke is not a cause. In the worst cases, the fact that it hangs around is the symptom of a very serious problem. To put it simply, the problem is a poorly designed and/or poorly maintained ventilation system.

Our approach is very simple. We know that labour is truly concerned about health and safety in the workplace. We believe that as a matter of principle the worker has the right to be protected from all workplace pollutants and toxins. We believe the technology exists to ensure comprehensive indoor air quality. We believe that the primary responsibility for a safe and healthy workplace belongs to the owners and managers of that workplace.

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We believe that the legislator, if he or she is truly concerned about worker protection, must establish clear and comprehensive indoor air quality standards and can do so in consultation with labour and management. We do not believe that smoking bans are the solution. Tobacco smoke that lingers in the workplace is a symptom, not a disease. We do not believe in a three per cent solution. What we are looking for is a 100 per cent solution. We are looking for something truly effective. What we are saying is that it is time to get rid of the box of Band-Aids. There is a cure. Let's make the cure available to



the workers of Ontario.

At present, there is no set of environmental regulations applied uniformly across Canada. Regulations that do exist are applied by occupational safety and health divisions within each provincial ministry of labour. There are no adequate laws for enforcing environmental standards in offices or public-access buildings anywhere in Canada.

A healthy building environment can be measured by the quality of its air. Air quality parameters do exist. They are measurable, controllable properties that define indoor air quality. Acceptable indoor air property levels have been defined.

The three common denominators of indoor pollution are poor ventilation, inadequate filtration and lack of hygiene. To be truly effective, any legislative or regulatory effort has to deal with all three areas. Clear and comprehensive standards have to be enacted and enforced in Ontario and across the country. Maximum ventilation rates must be stipulated, along with enforcement provisions applying to both the design and the ongoing operation. Filtration standards must be defined and clear steps taken to ensure that air filters are properly installed, regularly inspected and changed as required.

Ventilation systems, including their airways, should be examined regularly and any contamination should be removed.

No building owner or manager has the right to submit the people who work in or visit a building to stale or recycled polluted air. Clear and comprehensive indoor air quality standards will reduce to acceptable levels or eliminate all indoor pollutants, gases, vapours, particulates and micro-organisms.

To those building owners and managers who object that this is very costly, we say that the benefits of lower absenteeism, higher productivity and better morale more than offset the dollar cost. To those who say that the BCT is avoiding the issue of tobacco smoking in the workplace by talking about indoor air quality, we say look at the facts. Indoor air quality is the issue.

Attached to our submission, for your information, there is a column by David Graham, which appeared in the Toronto Sun on February 19 this year. Let me read to you just the first three paragraphs, and I quote:

"When Toronto's anti-smoking lobby successfully forced the city to ban cigarette smoking in offices, it had clearly won a major battle against indoor air pollution. Right?

"Wrong!

"Although cigarette smoke can make your eyes water and noses run, it often accounts for less than five per cent of the pollutants that taint office air.

"In fact, the battle to butt out managed to divert attention away from other more insidious, more dangerous offenders that turn sparkling office buildings into towers of toxins."

Mr. Graham goes on from there to give some dramatic examples of what has happened in Ontario when other pollutants are ignored. There are also some interesting quotes from an occupational hygiene officer of the Ministry of

Labour and from the Ontario Public Service Employees Union.

To paraphrase the secretary-treasurer of the BCT, René Rondou, who addresses this subject in a book entitled *Clearing the Air*, published last year by D. C. Heath Canada Ltd., we must not let the smoking-in-the-workplace issue become a smokescreen behind which management can stand and do nothing about the real pollutants and toxins in the workplace. We at the BCT believe that we owe it to our members to fight for a 100 per cent solution to this problem, not a three per cent solution, not a 25 per cent solution, but a 100 per cent solution. We at the BCT believe that this is more than a transitional collective bargaining issue; we believe it is a fundamental right of the workers.

We urge the standing committee on social development to focus its skills and energy on this crucial matter and to recommend the adoption of clear and comprehensive indoor air quality standards in Ontario. Bill 194 is not a solution. It is a very small part of a much larger problem. We urge you to tackle the whole problem. The workers of Ontario deserve nothing less.

If you have any questions, I would be pleased to answer them to the best of my ability.

Mr. Allen: Thank you very much. It is a pleasure to have someone come in this context and address the larger question of the sick building syndrome that confronts us on so many sides. I have personally had something to do with that in my own community where there has been a major problem around the Hamilton-Wentworth Detention Centre, for example.

It is quite clear, and you are quite right to observe, that the issues in major air quality problems we face are not simply constituted by tobacco smoke. There is a whole range of problems, not simply the ventilation system itself or the quality of maintenance but also the emissions that come from fabrics and plastics of various kinds, from cleaners and solvents, from fungi and other kinds of airborne particles as well as the contribution that comes from smoking.

However, I must say I sense in your paper a tactic which is fairly common in some matters of debate, and that is to say that because we have not dealt with the totality of some question we should therefore not be addressing a single aspect of it, something like saying, for example, that because we have not dealt with drugs totally and completely in our society at large, we should not deal with them in the area of sports and athletics. I want really to be clear. Are you saying to us that because we have not tackled fully and completely the indoor air quality problem in general, we should not address the problem of tobacco-derived pollutants in the indoor air quality of workplaces?

Mr. Fuchs: What I am basically trying to get across here is the fact that I had an interesting conversation with a scientist, Gray Robertson from the United States, one of the foremost authorities in the world, I believe, on indoor air quality. He opened my eyes unbelievably. As a matter of fact, when I came home I checked my furnace. That was the first thing I did. It was something I was not aware of. I am in trades. I should know better about things people are not aware of and ignoring.

In his findings of all the buildings that he inspected there was 31 per cent widespread allergenic pathogenic bacteria in the AC system; fibreglass in the air supply, six per cent; high levels of environmental tobacco smoke, four

per cent; levels of carbon monoxide, four per cent; high ozone levels, one per cent; high levels of formaldehyde, one per cent. I can go on and on.

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He was called into the Johns Hopkins Hospital in Washington one time, and I think it is a very interesting point that I would like to get across here today. The doctors had nothing else but cross-infections. They kept everything absolutely clean. They could not find the cause of cross-infection.

They called in Robertson and he checked out the duct system. He showed me pictures of what he saw behind a screen. There was soot that thick in an absolutely spotless hospital, and bacteria and fungi. They were going into the operating room after cleaning at the sinks, spotless, and the system was blowing the bacteria into the patients as they were opened up. These were things that were totally overlooked and totally ignored.

I believe that when you feel, as a committee or as the government, that legislation must be passed on a pollution level of five per cent, then surely you cannot ignore the remaining 95 per cent. There is no sense in it, but you are actually doing this if you continue to address five per cent only: the five per cent that is caused by a behaviour pattern of the people who work in the environment. You are shifting the burden of responsibility on to the working people, not on to the manager or owners of the building where it belongs in the first place.

I think that is wrong. That is absolutely misleading. As a matter of fact, if you have a so-called smoke-free environment or a smoke-free workplace, that is exactly what is being said by the people. I have been listening to some of the comments. Walk in. There is a false sense of security. As I pointed out in my paper, and Mr. Robertson made me fully aware of that—he said: "When I see the smoke lingering in the air in that building, I get out of there. It is not the smoke that is bothering me; it is what I do not see but can be measured."

In actual fact, what you are doing with the legislation is telling the working people they are in a safe environment, and they are not because now they cannot see it any more. They cannot see the toxins any more. They do not see the pollutants any more. They do not smell the pollutants but they are exposed to them.

If you are really concerned about workers' health and that is why you pass legislation, then I think you should address the whole issue, not only part of an issue. What we are doing is very dangerous.

Mr. Allen: Mr. Chairman, unfortunately, as I told you earlier, I have to leave for another engagement for half an hour. I respect the point that is made, but I must say I do not believe that it obligates us therefore to abandon an attempt to address the five per cent.

I believe that the rest of this Legislature needs to address, even more directly than it has, the problems that you have raised, Mr. Fuchs, and clearly they are pressing and they are urgent. But it certainly appears to me, given the testimony we have on the impact of tobacco smoke-borne carcinogens being far and away the most deadly carcinogens that are part of the pollution of indoor environments, that we cannot avoid addressing them in particular as well.

I just leave it at that and I am sorry to leave this in the middle of discussion, but I appreciate your presentation.



Mrs. Cunningham: You certainly do know how to make an impression, in making us all think about the environment that we work in. Some of the work that you have done, I am sure, has caused you to have great concerns about just how we begin to deal with this problem.

I am going to see if you would like to respond to what I think are the political realities of what we are facing here now. I see the government with a piece of legislation that, quite frankly—I said it before and I will say it again, we are looking for the best we can get. I think you are probably saying, "Withdraw this piece of legislation." Is that what your position is?

Mr. Fuchs: That is correct, yes, and if I understand your question right, attack the problem at its source. The real proper protection is given to the working people in Ontario by having comprehensive indoor air quality standards. Without them, you are lulling the working people of Ontario into a false sense of security.

I do not know how many people who are sitting here have worked in industrial environments. I spent a long time in industrial environments and it does not take an expert. It takes common sense. When you see the sun shining through the window you see the waste; you see the dust and all the rust, the cast-iron dust and everything floating around, all the particles, filled with every toxin known to man that people breathe in, and we are ignoring it. We are absolutely ignoring it, but that is the only time you see it. Watch when the sun shines through the window; you can see it.

Basically, people are exposed to that, and this is real. These are facts. This is not exaggerating anything. I heard a lot of exaggeration on the point of smoking, and people who are against smoking will do anything to stop it, but we are not addressing the problem at the source where it should be addressed, in the air quality, if that is the issue.

Mrs. Cunningham: Are you aware of the work that the Canadian General Standards Board is doing right now with regard to developing standards for air quality in buildings?

Mr. Fuchs: Several agencies have gone into it. More or less, private companies have gone into it. There is a market that is crying out for it. In the United States, Robertson had to develop his own measuring equipment.

Mrs. Cunningham: Although they call themselves Canadian, it is not a government—

Mr. Fuchs: There are some people here. There is a group in Mississauga. There are a few people who have gone into the field of indoor air quality. I spoke to some of them, and we are coming on board in Canada fast and furious with the issue.

Sooner or later, somebody will have to deal with that, because once the knowledge spreads, the people become aware of it and put pressure on the politician, and naturally he will have to deal with it. What we are saying is, deal with it now. Deal with the whole kit and caboodle at once and you solve all the problems that go with it.

Mrs. Cunningham: That particular board was mentioned in the article that Mr. Fuchs has brought to our attention. I just wonder if the committee could be advised of standards with regard to pure air. I am not sure where they exist or whether it is a Canadian government body.



The Acting Chairman: I am not sure what you are referring to. Are they in the brief that Mr. Fuchs presented to us?

Mrs. Cunningham: Yes.

The Acting Chairman: Can you point out where they are referred to? Perhaps the members and ministry staff who are here can note that reference.

Mrs. Cunningham: Yes. The very last page. I am just wondering what they really are and if there is something that we can be doing a little bit more work on in the deliberations, given the presentation we have just heard.

The Acting Chairman: Just in terms of trying to help our staff, on the last page I only see a recommendation that they—

Mrs. Cunningham: I am sorry, it is part of the article, the last page.

Mr. Fuchs: If you will allow me, maybe I will answer your question. To the best of my knowledge, there are standards when the building is built. This is up to specification. Usually a new building is in good shape and it has all the new technology.

However, assume the owner takes over. That includes the federal government. There are no standards for qualified people running the system. It is a horror show, because most of the time there is space where the furnace or the filtration system or the air-conditioning system is located in any building, and usually the janitor who is in charge stores all his paint pots right beside it. It blows it all through the building. There are absolutely no standards of people who maintain or inspect buildings. There is absolutely nothing available in this country, and I think this has to be addressed.

The Acting Chairman: I am hearing an absence of standards rather than a particular set of standards that our staff could find. Is that your understanding?

Mrs. Cunningham: I think that is what we might find, but I just want to be informed, that is all.

The Acting Chairman: Perhaps we could ask the staff to bring to our attention any standards for air quality in Canadian buildings. Is that the question?

Mrs. Cunningham: Yes. I expect most workplaces would be made aware of any that exist, and I am thinking there are not very many, except in new buildings.

Mr. Fuchs: I will give you an example. I do not know whether you are aware of it, but go into the average industrial area. They have the small, square buildings. They have a couple of gas heaters sitting under the ceiling. If you want fresh air, you open up the loading dock and the (inaudible) are driving in and out.

That is the average industrial environment, and we are talking about the guy sitting in a corner and smoking a cigarette. A steelworker will laugh at you when he hears what is being presented here. I do not know how many industrial environments you have seen or worked in, but what is being said here is absolutely, grossly exaggerated.

I listened to it yesterday, I listened to it today, and I am just shaking my head at some of these comments. Yes, people who do not like to be exposed to smoke have the right to be protected if they do not like it. But when I look at the claims that are being made as far as health hazards are concerned and the toxins and what people are exposed to out in the work environment, I cannot believe what I am hearing, the claims that are being made by experts.

They surely have not been in a work environment; they have not lived it and they have not worked in it or they would know better than that. I am not disputing that they are very, very positive in their approach and maybe they should do more; but they should broaden their scope and look at the whole problem, not one isolated topic of it. That is my point.

1530

The Acting Chairman: I think the deputant has made his point quite clearly and has brought to our attention the fact that there may be some question of standards for workplace air quality in Canada, and perhaps our staff could confirm the fact that there are none or, if indeed there are some, bring them to our attention. I think that was the nature of your inquiry, Mrs. Cunningham.

Mrs. Cunningham: Yes. I think that might fit in with the 25 per cent for all of us to look at. It might help us in our deliberations.

The Acting Chairman: Thank you very much. I do not think there are any further questions to the deputant. Thank you for putting your position.

Mr. Fuchs: Thank you very much. I appreciate that.

The Acting Chairman: Could I ask if James Repace is here?

Just before he comes up, I want to indicate to all members of the committee my understanding that there are four groups scheduled at 3:30, 4:00 and 4:30: the Heart and Stroke Foundation of Ontario, the Non-Smokers' Rights Association, the Hamilton Regional Cancer Centre and Physicians for a Smoke-Free Canada. They have all agreed to turn over their slots to Mr. Repace. Is that correct?

Mr. Mahood: No. What we were hoping to do is have Mr. Repace, along with Dr. Mary Jane Ashley of the Heart and Stroke Foundation of Ontario, myself from the Non-Smokers' Rights Association and related organizations and Dr. Michael Goodyear of Physicians for a Smoke-Free Canada, all make our presentations at one time and then entertain questions on any of the big issues.

Mr. Chairman: Is that agreeable to members of the committee? That sounds fine. Certainly. Do you want to come forward then and make your presentation? Then we will follow with questions and we have until 4:30, if that is required.

Mr. Repace et al., please introduce yourselves and go ahead.

## NON-SMOKERS' RIGHTS AND OTHER GROUPS

Mr. Mahood: Mr. Chairman, members of the legislative committee, my name is Garfield Mahood. I am the executive director of the Non-Smokers' Rights Association and the Smoking and Health Action Foundation. I am going to introduce the various participants.

To my immediate right is Dr. Mary Jane Ashley, who will speak first on behalf of the organizations. Dr. Ashley is the chairman of the department of preventive medicine and biostatistics at the University of Toronto. Dr. Ashley was a member of the task force that produced, in 1982, the Ontario Council of Health report on tobacco in Ontario, a major achievement.

Dr. Ashley has been a member of a federal committee which has looked at the health effects of environmental tobacco smoke. I believe she has ample expertise in the area of direct and involuntary smoking to address the committee. Her curriculum vitae, as I understand it, is being made available to the committee and, if you take a quick look at it, you will see that her academic credentials are impeccable.

Dr. Ashley will, of course, be representing the Heart and Stroke Foundation of Ontario, where she is director and chairman of the task force on smoking.

On my far right is Dr. Michael Goodyear, an oncologist with the Ontario Cancer Foundation, Hamilton Clinic. Dr. Goodyear will represent the Physicians for a Smoke-Free Canada.

On my far left is David Sweanor. He is the full-time staff legal counsel for the Non-Smokers' Rights Association. He is a consultant for the International Union against Cancer, which, as you know, is related to the World Health Organization.

On my immediate left is James Repace. At the risk of making Mr. Repace blush, I think I can say people who are familiar with the field would say that Mr. Repace is in fact the world's leading authority on the effects of ventilation on environmental tobacco smoke. He has published probably more than anyone else in the field, 23 major papers on this subject and he has written editorials for the Canadian Medical Association Journal. He has appeared as an expert witness on this subject all over the continent and perhaps internationally. Mr. Repace will follow Dr. Ashley.

Having said that, I would like to introduce Dr. Ashley to speak first on behalf of the Heart and Stroke Foundation of Ontario.

Dr. Ashley: Thank you very much. As Mr. Mahood has said, I am here today representing the Heart and Stroke Foundation of Ontario and its 70,000 volunteers and staff members in Ontario. We wish to congratulate you on introducing a piece of legislation which potentially could have a very important effect on the public health of the people of Ontario.

However, we view the legislation as it currently is presented as being inadequate and not acceptable in its present form. It needs significant amendments. I am not going to get into this particular aspect; I am leaving that to my colleagues to address. I just want to say, though, that from the point of view of the Heart and Stroke Foundation of Ontario, probably the most significant deficiency in the legislation that we currently see relates to the issue of what you mean by the words "designated smoking area."



I would also like to point out that another event has occurred in Ontario very recently, and that is that last Thursday the Minister of Health introduced the mandatory programs and guidelines for the public health departments of Ontario. This was a very significant step forward too in public health. In that particular guideline, it is required that medical officers of health provide protection to nonsmokers from secondhand smoke.

I would hope that indeed this bill we have before us would strengthen the ability of medical officers of health to actually protect nonsmokers from the effects of secondhand smoke. In its present form, I do not believe it would be effective and helpful to the medical officers of health in this regard.

What I would like to do in just a very few minutes is give you a history of how the health effects associated with secondhand smoke have actually unravelled. One way of looking at the history is to tell you how the scientific information has actually been gathered and brought together.

One particular set of reports which is used widely throughout the world by those of us who work in the smoking area is the Surgeon General's reports from the United States Public Health Service. The first Surgeon General's report was produced in 1964 and there has been a series of reports, most recently over the last 10 years or so, on an annual basis, culminating in the 25th anniversary report which was published in January 1989.

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The first mention of secondhand smoke in the Surgeon General's report occurred very briefly in the 1972 report. By 1979, enough information had accumulated about the health effects of secondhand smoke that the Surgeon General devoted a chapter to the issue. By 1986, enough information had been gathered about the health effects of secondhand smoke that the 1986 report is devoted to the subject of the health effects of involuntary smoking.

In Canada, too, there have been a number of reports that have addressed this particular issue as the evidence has grown. Reference has already been made to the Ontario task force report on smoking and health, which was released in 1982 and made specific recommendations concerning the control of secondhand smoke in the workplace. Included in the report was an appendix dealing specifically with the health effects of exposure to secondhand smoke.

In Ontario also, in the Ministry of Labour, quite substantial review was conducted by Dr. House of the health effects of involuntary exposure to tobacco smoke. That report was released in 1985.

At the federal government level in Canada, in 1987, an expert committee report was released called Involuntary Exposure to Tobacco Smoke. This particular report also summarizes the literature to date on the health effects of cigarette smoking.

Finally, quite independent of the Surgeon General's report, one month earlier an expert committee of the National Research Council was given the specific task of reviewing the scientific literature concerning health effects of involuntary smoke exposure and produced a substantial report also documenting the health effects.

In conclusion, I think from the scientific point of view we can say that there is no longer any doubt that environmental tobacco smoke is a health



hazard, that tobacco smoke contains carcinogens, that the risk of cancer and other diseases is significantly increased in association with exposure to secondhand smoke and that the time has come to take effective action now to control this particular environmental hazard.

The Acting Chairman: Thank you, Dr. Ashley. I note there was one question. Perhaps we could have questions after each speaker to keep the continuity.

Mr. Mahood: Sure, if that is the preference of the committee.

The Acting Chairman: Try and keep them reasonably brief.

Mr. Owen: You have indicated that you represent a number of thousands of volunteers in your association.

Dr. Ashley: Seventy thousand, yes.

Mr. Owen: Do you have any statistics to show where the public is in the appreciation of this problem? You have given us background, figures and statistics of what the problem is, but have you any idea of how accepting the public is at the present time on some of the proposals you people are making?

Dr. Ashley: As a matter of fact, I do have some material. I was a co-investigator on a study that was carried out in Ontario in 1983-84. It was a population survey of the entire province. In that particular survey, we were interested in finding out people's attitudes towards restrictions on smoking in a number of places. We asked them questions about 13 different locations, one of which was the workplace.

We also asked them questions about their knowledge of the health effects of passive smoking. We found out that they were not as knowledgeable about passive smoking as they were about active smoking and that clearly there needed to be some improvement in the knowledge level.

We asked about support for regulation on smoking in specific settings and with regard to the workplace. The percentages that indicated that smoking should not be permitted or that restrictions should be in place were: for never smokers, 87.5 percent answered that question yes; for former smokers, 83.5 percent answered that question yes; and for current smokers, 70.3 percent answered yes. It is clear that even among current smokers, there is substantial support.

Mr. Owen: How large was that sample?

Dr. Ashley: It was 1,383.

Mr. Owen: Was that limited to this province?

Dr. Ashley: Yes, it was Ontario. It was funded, actually, by the government of Ontario.

Mr. Owen: You can appreciate, when legislation is introduced on any subject, that most of the time the people govern themselves or police themselves in that activity, and they have to be educated to understand why it is best for the whole society.

Dr. Ashley: That is right. As I said, these data were collected in

1983-84. I suspect that if we did this same study again, we would find these percentages are even higher. There has clearly been a major shift in public opinion during that period.

Mr. Owen: That would be about four years ago?

Dr. Ashley: That is right. The paper was published in 1987. That is how long it takes to analyse data.

Mr. Mahood: I would ask the committee to accept the reports that Dr. Ashley has produced for the committee as read into the record. We would also make that request for ourselves and for the Physicians for a Smoke-Free Canada, that you accept those reports as read.

Mr. Repace: It is a pleasure to be here before this distinguished committee. Before I begin my remarks, I would simply like to open by stating that I was a senior reviewer of the 1986 Surgeon General's report and I was the project officer who commissioned the 1986 report of the National Research Council on environmental tobacco smoke. It is with this perspective that I would like to share some of my insights.

I would like to quote briefly from page 304 of the 1986 Surgeon General's report, which is a chapter that has to do with workplace smoking policies: "Evaluation of a specific policy or piece of legislation must address whether the policy achieved its stated goals and must also screen for other effects. The primary goal of policies regulating smoking in public places or in the workplace is the reduction of individuals' exposure to environmental tobacco smoke."

In fact, the prime object of any legislative measure to protect building occupants from an indoor pollutant is to reduce exposure. Unfortunately, Bill 194, by concentrating the smokers in one fourth of the floor area of the workplace, will not reduce nonsmokers' average exposure to environmental tobacco smoke, or ETS, precisely to zero. This is like trying to control a workplace pollutant such as benzene, arsenic, formaldehyde, beta-naphthylamine or aminobiphenyl, all of which are in tobacco smoke, by moving the emitting machinery over into one fourth of the floor area of the room.

I think you can easily see that that will not reduce the average exposure of the workers in that building. ETS, in fact, must be controlled like any other indoor pollutant. You have three factors you have to consider in controlling any indoor pollutant: its odour, its irritation and its toxicity, including its carcinogenicity. In the case of ETS, it has all of those factors. It has a distinctive odour which is offensive to many nonsmokers, it is irritating to many nonsmokers and it is toxic to all nonsmokers, particularly carcinogenic.

Any measure to control ETS in the workplace must address those factors. In ascending order of importance, you go from odour to irritation to toxicity to carcinogenicity. The prime controlling factor for ETS in the workplace must be its carcinogenic effect. Both the 1986 Surgeon General's report and the 1986 National Research Council report in the United States and your own government's reports have implicated environmental tobacco smoke as a human carcinogen. Therefore, I submit, you must control it on that basis.

Consider, if you will, cleaning up Lake Ontario, cleaning water pollution in the lake. You would not, to clean up water pollution in the lake, concentrate all the sewer pipes on one beach. That would clearly not clean up

the water pollution. Nor would you attempt to filter the lake; by analogy, filtering the air in a building to remove environmental tobacco smoke. These are not measures which are sound industrial hygiene practices to control an indoor pollutant. Sound industrial hygiene practice, just like sound practice to control water pollution, restricts the source. This is the way you reduce exposure. The other measures will not reduce exposure significantly or at all.

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The methods of preference to control environmental tobacco smoke in the workplace are to separate smokers on a separate ventilation system with negative pressure with respect to the remainder of the building, or to remove the smokers from the building entirely. In the United States and, indeed, in the federal government of Canada, there are many organizations which restrict smoking from the building entirely. At the Environmental Protection Agency we permit smoking only in designated areas which are under negative pressure with respect to the remainder of the building and are of one-pass ventilation, so that environmental tobacco smoke will not be recirculated in the building where it can affect nonsmokers.

This bill is really a public health measure to control one of the deadliest indoor pollutants, one which I have estimated, with Dr. Lowrey, causes 5,000 lung cancer deaths per year in the United States and which I have estimated, in an editorial in the Canadian Medical Association Journal in 1985, would cause as many as 500 lung cancer deaths per year in Canada.

By comparison—I will talk about the US situation—5,000 lung cancer deaths a year is 100 times greater than the mortality from all other hazardous air pollutants which the EPA regulates: benzene, arsenic, coke oven emissions, vinyl chloride and radionuclides. They total less than 50 deaths a year before control.

We have estimated 5,000 deaths a year. Since that time there have been nine other risk assessments. All but one of them estimates roughly 3,500 plus or minus 1,500 lung cancer deaths a year: a phenomenal agreement among various risk assessments. You usually do not see that tight a spread in risk assessment.

In summary, I would urge you to revise this measure, to mandate active control measures which will reduce nonsmokers' exposure. In its present form, it is virtually only cosmetic.

Finally, I would like to add two more things. I listened carefully to the testimony of the representative of the Bakery, Confectionery and Tobacco Workers International Union. He quoted an outdated figure of three per cent of sick-building problems being caused by environmental tobacco smoke. That is an outdated figure which was given in a paper by the National Institute of Occupational Safety and Health in the United States several years ago.

The current position of NIOSH is that tobacco smoke is one of the principal indoor air pollutants and that, in any sick building, the first control measure you take is to eliminate smoking. Why? Because in dealing with cases of sick-building syndrome, you are dealing with eye, nose and throat irritation, headaches, dizziness and nausea. Those are precisely the symptoms that are caused, in many susceptible people, by exposure to environmental tobacco smoke. Thank you.

The Acting Chairman: We have a number of questions and



perhaps we should deal with the questions as they come. I think Mrs. LeBourdais was first. I do not know if there are other questioners.

Mrs. LeBourdais: I just have one quick question. I understand that you are still with the Environmental Protection Agency?

Mr. Repace: That is correct. However, my testimony here is as a private citizen. It does not necessarily reflect the official policy of the Environmental Protection Agency, and that is so stated in the curriculum vitae which I have distributed here.

Mrs. LeBourdais: That was why I was asking the question: whether there is any reason you are here as a private citizen as opposed to in your capacity with the EPA.

Mr. Swenor: No international incidents here.

Mr. Mahood: I think it is just inappropriate for someone with the United States government to be commenting on a bill in this jurisdiction, so he was invited by the health agencies as a private citizen. Otherwise the invitation would have had to go through governments—that is the way I understand it—and it would never have happened.

The Acting Chairman: Or it might have happened six or eight months from now.

Mr. Sterling: I would like to thank you, as an American citizen, for coming and sharing your knowledge, which is quite considerable. Your credentials are impeccable in terms of advising us on this particular issue.

On this legislation, because you are no doubt aware of other legislation in North America, the sad thing about Bill 194 in my view would be that we would not amend it and it would either die or become legislation which would be meaningless. What kind of opportunity does Ontario have to be a leader with this legislation?

Mr. Repace: I think leadership in this area means that ideally you take measures to restrict smoking entirely from the building. The reason for this is that it sends an unequivocal message to the smokers that this is a health-related measure to protect nonsmokers; to protect the smokers from the consequences of their own habit; and also to protect employers from the consequences of having smokers who grow old and become prey to the diseases of smoking, in many cases while they are still working, who then become a burden not only to themselves and their families but to their employers. It is very costly to have people on your payroll, particularly key people, come down with chronic diseases such as heart disease, cancer and respiratory disease. I think the best sorts of measures, those which have been taken by the premier smoking control agencies in the United States, such as the national institutes of health, restrict smoking entirely from the building.

However, in doing this you do not want to make smokers feel that they are pariahs, which they certainly are not; they are human beings like us all. They merely have to understand that this is a public health measure and requires fairly stringent practices. This is no different from controlling asbestos or formaldehyde or radon or microbes in a building. It is a public health control measure and I think that is what has to go across.

I think in implementing a piece of legislation like this you have to



phase it in over a period of six months. You have to announce it to the employees; you have to let them know it is going to happen; you have to make smoking cessation programs available to them; you have to bring the unions in on this; and you have to make it clear that it is a health-related measure and not an attempt to control people's behaviour. If they want to smoke outside of the building, that is their business.

Mr. Sterling: Could I ask one other question? In the United States, I am aware that there are several states within the union that have state-wide laws relating to controlling smoking in public places.

Mr. Repace: That is correct.

Mr. Sterling: There are a number of municipalities, notably San Francisco, which was really the forerunner of the city of Toronto bylaw system to control smoking in the workplace. Is there any state in the US which has a law relating to controlling smoking in the workplace?

Mr. Repace: Yes, there are about eight or nine states which do and the remainder of the states have considered legislation. It is very difficult to get legislation passed on the state level because of the determined opposition of the tobacco industry. Nevertheless, it is possible to do it.

It is much easier to do this on a municipal level, and in fact it has happened, particularly in California. Almost every municipality of any size has fairly stringent regulations controlling smoking. I know California has, Arizona has pretty strict rules, Minnesota does and so forth.

These kinds of regulations are spreading like wildfire in the United States, and of course here in Canada. I think you were first, certainly in restricting smoking on the federal government level and restricting smoking on your aircraft. As you know, in the United States we now restrict smoking on flights of two hours or less and the Department of Transportation is in a rule-making where it is going to consider whether to extend that to all flights or possibly extend it to no more flights.

I am on the oversight panel for the Department of Transportation and right now there is a contractor who is measuring the levels of environmental tobacco smoke on American flag carriers. There will be a report, I think, in about 12 months, and then we will go into rule-making.

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The Acting Chairman (Mr. Kanter): I am wondering if I might follow-up. I think as the chair that I am neutral, at least in my current position on this matter, but the question you raised about the American jurisdictions: you mentioned there were eight or so states that had state-wide laws restricting workplace smoking, as I understand it. I am wondering if you could provide, under a fairly tight time-frame, any information you have on the pattern they follow.

You mentioned, for example, the objectives, as you saw them, of restricting smoking entirely from the workplace or ensuring that every workplace provide separate ventilation. I am wondering if there are currently in existence states that have those type of laws or, if not, what type of pattern the American states that have smoking restrictions in the workplace follow?

Mr. Repace: I believe, unless I am mistaken, there was a section in the Surgeon General's report which listed the various provisions of state laws. I am not completely familiar with that part of the book, but we can get that information to you.

The Acting Chairman: If it is in the material, or if you can get it to us and can provide it to the clerk, it will then be made available to all members of the committee.

Mr. Repace: You should know that the federal Environmental Protection Agency in the United States is very much concerned about the issue of workplace smoking, and we are preparing materials on workplace-smoking policies. This is one of my projects at EPA. We are also in the process of performing an agency risk-assessment on environmental tobacco smoke, which, we feel, would be done some time this year. But, at the present time, we do not have any official output in this area. I will see what I can do to get you that information.

The Acting Chairman: Thank you. Mr. Owen had a question.

Mr. Owen: The chair actually asked part of the question that I was going to ask: what has happened in other jurisdictions, other states, other countries? Most of the health agencies that have been before us have indicated that they want a ban on smoking in the workplace, except where there are specific rooms or locations which have the suitable ventilation to allow it.

I wanted to know what the jurisdictions were, as the chair has asked, but I also wanted to know if you had any information as to how successfully they were implemented: whether there was resistance; whether they had a policing problem; where the public was, with regards to where these other jurisdictions have pursued this type of legislation? I did not want just where it has happened, but if you had any information or any input for us as to how it took place and what the reaction was?

Mr. Mahood: Mr. Chairman, may I respond to Mr. Owen's comments, just initially?

I think the Ontario government deserves praise for bringing this initiative forward, but we also hope that the government understands that it is in a real leadership position on this. The fact is that there certainly are no other jurisdictions, at the provincial level in Canada, which have introduced this kind of measure, and my reading is that this kind of broad measure is rare, even in the United States. So, you may not have the kind of research that you are looking for, with respect to enforcement.

There are a number of jurisdictions in the United States—for example, the state of Minnesota, going back to 1975—that have regulated and given rights to people in public areas and the workplace. But Canada has in fact jumped ahead of some of the American jurisdictions on some issues related to tobacco.

One of the reasons Mr. Repace agreed to come up here for was that he recognized, or indicated to me, that what Ontario does may very well impact on American states. That is why it is very important that we do it right. But there is not a lot to draw on by way of experience, certainly, from our research with respect to the regulation of smoking in workplaces at the state level.

Mr. Repace: I can respond very briefly to your comment and I can tell you the experience we have had in Environmental Protection Agency headquarters was very sanguine. We announced that we were going to have a policy. I participated in the negotiation of that policy. When it went into effect, there was an announcement from the administrator of EPA that it was going to take place at a certain date, which it did, it phased in, and we had a health and safety meeting afterwards to see whether there were any problems in enforcement or in carrying out the policy.

Out of a workforce of 6,000 people, of which 20 per cent were smokers, we had precisely six people come in and complain, and the tenor of those complaints was that it was very smoky in some of the designated smoking areas. It was sort of funny to hear smokers complaining about exposure to environmental tobacco smoke, you would not think they would mind it, but by and large, they had the option of going outside, smoking in the garage beneath the building or wherever they liked outside of the building, and we have very good compliance, with very minor exceptions. It has not been a problem for us.

Mr. Owen: We are starting to get some information back from the federal policy in its buildings and the response and the reaction to it. It is a little too early to determine what is happening with provincial buildings since we instituted it just a matter of weeks ago. Do you have any other insight you can give us as to the experience with large operations industry-wise?

Mr. Repace: I can tell you from some of the HHS hearings and meetings that I have been at, Department of Health and Human Services, we are writing a workplace smoking manual with the National Cancer Institute, the National Heart, Lung and Blood Institute, the Office on Smoking and Health and the Office of Disease Prevention and Health Promotion. These are all organs of the Department of Health and Human Services, and I have attended many of these meetings.

I can recall the health and safety director of Texas Instruments, which is a very large corporation, as you know, tell its experience with workplace smoking policies. They initially tried air-cleaning. They thought it would be very nice to hang these electrostatic precipitators all over the offices. Initially the complaint rates from the nonsmokers did go down, because they felt, rightly so, that management was responding to their complaints. However, that only reduces the particulate phase of environmental tobacco smoke and does not reduce the gas phase, which is where all the irritation is. Six months after that policy they had about as many complaints as before, so they decided to go smoke-free. They have 700 buildings around the world and they restricted smoking in all of them to outside the building. It seemed to work very well.

Mr. Owen: How long has that been in place?

Mr. Repace: That has been in place several years now, two or three years.

Mr. Owen: They must have tens of thousands of employees, or more.

Mr. Repace: They sure do.

I think by and large you will find that in most situations, people who are smoking would like to quit. If they go to a workplace where they have personally quit but they are surrounded by individuals or coworkers who are



smoking, they are breathing smoke, it stimulates their hunger, their addiction for nicotine, and they become recidivists. They take up smoking again.

It is very easy to quit, I think, if you cannot smoke in your workplace. That is a big chunk of time. In general, smokers cannot compensate. The average smoker smokes 32 cigarettes a day, so in an eight-hour period he or she would smoke about 16 cigarettes. If you cannot smoke 16 cigarettes in that eight-hour period, you are not going to smoke all of those 16 cigarettes outside of that time; it just does not happen, so they tend to cut down and they tend to quit. You are going to see significant inroads in reducing smoking.

Mrs. LeBourdais: Perhaps you have already addressed parts of my question. I really wanted to know which state or country has the toughest legislation and what was the backlash from the smokers' rights and did it in effect dissipate after a short period of time and life went on?

Mr. Repace: I do not think there is any organized smokers' rights movement. I know the tobacco industry funds smokers' rights groups, but they are really industry creatures.

I have personally attended many smoking legislation hearings in the metropolitan Washington area. In the area there are several counties which surround Washington, DC—Prince Georges county, Howard county, Montgomery county, Arlington, Alexandria and the District of Columbia itself. Almost all of these have legislation in place which restricts smoking in restaurants and public spaces. They are beginning to think about doing it in the workplace as well. In very few of these hearings have I seen any smokers come in off the street and protest that their rights were being violated.

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I have seen members of the tobacco workers' union, members of the tobacco institute, people from the chamber of commerce, people from the restaurant industry who claim they are going to go out of business if the legislation is passed. In my home county, Prince Georges, which is a tobacco-growing county, we have had a bill restricting smoking in restaurants since 1978. No restaurant has gone out of business because of that legislation and no tobacco farmer has gone broke either. Many of them have switched to other crops for various reasons, but it is not the kind of legislation which impacts smokers or tobacco farmers. It is a public health measure, just like legislation to control asbestos in buildings.

Mr. Black: I have a three-part question, if you will bear with me while I try to stumble through it. The first, I think, is that we have heard suggested here today that the current legislation, the proposed legislation should be amended to provide perhaps two alternatives. Alternative A would be a smoke-free workplace and, if that were not the situation, alternative B would be that there be a smoking area which is separate and distinct and separately ventilated. Can you give me specific examples of jurisdictions in the US that have that kind of legislation in place?

Mr. Repace: I do not have in my head the legislation of all the various states or municipalities. I think that both of those are common kinds of things to happen. I think that individual workplaces should have an option as to whether they want to designate smoking areas on separate ventilation or ban smoking, and you give them that option. The primary goal has to be the protection of the nonsmoker. This is the focus of the legislation.



It is not to penalize the smoker, but it is to protect the nonsmoker, and the employer has to have some flexibility in deciding what works best in a particular workplace. I do not have all of these laws in my head at the present time as to which jurisdictions have tried what, but by and large in the US federal government I am familiar, as I said, with the Department of Health and Human Services, which just decided to unilaterally exclude smokers from its buildings, and the Environmental Protection Agency, which has the other alternative.

Both of these kinds of things have worked. There have been no big protests from government workers' unions saying their rights have been violated. In one case, in the HHS case the unions for the Social Security Administration were not consulted in advance, which was, I think, a tactical mistake because they had a clause in their contract which required that they be consulted, so they did take that particular legislation to court. But I think it is going to be resolved by negotiation with the unions.

I think you really have to involve the workers and the unions and let them know up front that you are going to do these kinds of things. What happens in a particular workplace, alternative A, ventilation in separate areas, or alternative B, restriction from the building, can be a union-management negotiating issue. I do not think that either one is necessarily preferable in a particular workplace. It is going to depend on what the workers want and what the management wants.

Mr. Black: You have led me into the second part of my question, that is, the reaction of organized labour. Keeping in mind that Ontario and Canada generally, I think, have a much stronger labour movement than your country, could you give us first of all an indication of whether organized labour is generally supportive or in opposition and would you like to comment on how you might perceive the same situation in Ontario with our stronger labour movement?

Mr. Repace: I cannot comment on the situation in Ontario, because I am not terrifically familiar with it, but I know that in the United States the labour movement is all over the map on this issue because it does represent both smokers and nonsmokers. Some locals are very supportive of very restrictive legislation. In the State Department in Washington, for example, the local of the American Federation of Government Employees, the AFL-CIO, is pretty strong on total restrictions on smoking in the workplace. In other instances where the Bakery, Confectionery and Tobacco Workers International Union has a big say in a particular union, they may come down on the other side.

So I think you are going to find a distribution of opinions among the unions. What we do recommend is that the unions be consulted in advance and that it be made clear that this is really a health and safety issue and not an issue where it is categorizing or stigmatizing workers, because if they have the feeling that that is what it is, they are going to be opposed to it. It has to be made clear that this is just like any other workplace pollutant. It really is not any different. There are 4,700 chemicals in environmental tobacco smoke and most of those are chemicals which are otherwise regulated in industrial settings or in the environment. So it is not really any different.

The problem is that there is an overlay of social behaviour on it, and therefore it becomes a little bit more difficult to get a workplace smoke-free than it might otherwise if it were just a simple industrial process.

Mr. Black: Finally, could you respond to the impact on small business? It is one thing for a large corporation to identify and to maintain a smoke-free area within its larger building and even have it ventilated separately. That might impose a significant difficulty for small business operations, one that financially they could not handle, and so, in fact, such legislation might not offer any alternative for small business people at all. Would you comment on that?

Mr. Repace: I think the real issue here, again, has to be on the workers. The issue is whether an individual nonsmoking worker who does not want to be exposed to an unacceptable cancer risk or the irritation from environmental tobacco smoke would have the opportunity to work in a small business. If you are going to grandfather them through and say, "Well, because they are very small we are not going to have restrictions there," then I think that you are discriminating against the public health protection for workers and small businesses. So I think you have to include them.

If it is a sole family-operated business, I think they are going to do what they want in any case and you are not going to have any control over that. But I think that if it is a business that is a small business but employs nonsmokers, you have to extend that courtesy and protection to them as well. I do not think it is a great imposition for an individual who wants to smoke to step outside and smoke, particularly in a small business. People take breaks for all kinds of reasons. This is just one.

Mr. Black: Finally, and I am not disagreeing with you because I support the argument you are making, but I would invite you to visit Timmins in mid-January and step outside for a smoke. Let me tell you, it would be far different from California.

Mr. Repace: I appreciate the difference.

Mr. Mahood: Mr. Black, through the chairman, I might say that we have noticed a distinct change in attitude developing within the unions through our organization being the major organization working in this field in Canada, I guess. Part of it relates to the recent findings, many of which Mr. Repace has connections with, of the carcinogenic risk assessments which have been done. I guess there have been nine major ones done so far. The unions are now realizing that they lose credibility if they, in fact, are saying that they are not interested in protecting their nonsmoking workers or members from this cancer risk when this cancer risk is producing roughly 100 times the number of lung cancer deaths that are produced by the industrial production of benzene, vinyl chloride, arsenic and coke oven emissions all combined. They just lose all credibility.

So what I think they are finding is that they have to stand up and be counted; otherwise they cannot make any noise about some of the other risks which they want to deal with in their workplace, if they are saying "We are not concerned about the major one." So I think that once the health message goes out there, that that, in fact, happens.

I would like David Sweanor to address the recommendations that are being put forward and then Dr. Goodyear has to speak, but we would like to get these key amendment recommendations forward. At some point after that, I hope that—

The Acting Chairman: We do have one more person on the list for questions: Mr. Daigeler. Perhaps he could be brief and then we could go back to you, Mr. Mahood, to direct your submission as you wish.

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Mr. Daigeler: I have only one question. I usually try to be brief. If I understand right, Mr. Repace, your main argument is that the 25 per cent provision in the bill is really ineffective, because through the ventilation system the smoke is simply redistributed over 100 per cent of the working area.

Mr. Repace: That is correct.

Mr. Daigeler: Are you, however, perhaps overlooking one very important factor of this bill, which I call its signal function, namely, that through this bill there will be quite a few people who will be induced certainly to smoke less and perhaps to give up smoking? Therefore, the whole amount of smoke, as it were, that is going to be redistributed is going to be less because people are going to smoke less.

Mr. Repace: No, I do not think so. I think if you reserve a large area like that in the workplace, all you are going to do is redistribute the smokers into one area. They are still going to have the opportunity to smoke and it will not reduce smoking. It will certainly not reduce the atmospheric concentration of environmental tobacco smoke.

Mr. Daigeler: If they smoke the same amount.

Mr. Repace: I think they will.

Mr. Daigeler: In both cases, I think that is not a scientific statement. It is certainly not in mine either, but I do believe that the signal function of this bill is it does clearly state that nonsmoking is the rule and everything else is an exception. By that very fact, I think it has a very important educational function.

The Acting Chairman (Mr. Black): I wonder if we might proceed now with the rest of the presentations and then take further questions. Would that be agreeable?

Mr. Mahood: Indeed. I was just going to make a quick comment, if I may.

The Acting Chairman: You go right ahead.

Mr. Mahood: I am going to be very quick.

The Acting Chairman: I hope Mr. Daigeler does not feel a need to respond, and we can get on with it.

Mr. Mahood: I think, in fairness, the dialogue is useful. Any time the issue is raised, you are going to have some health benefits. But if I can read between the lines, knowing Mr. Repace's position, our position is that there will be some employers who will use this opportunity to do what the private sector is doing now, which is to take the workplace smoke-free.

You are going to get some reductions in there. That indeed will happen. What Mr. Repace might have as a concern, and I would have as a concern, is that unless the bill is a bill that seriously addresses the issue, which is either no smoking or smoking in separately ventilated lounges, you will not get the reduction in the total number of smokers that you are hoping for. If you do not get the total number of smokers being reduced, you in fact will not



have the aggregate amount of smoke in the environment reduced. It is only when you bring forward a bill that really addresses the issue that you will get people quitting and cutting down on your total aggregate of smoke in the environment.

The Acting Chairman: Thank you very much. Perhaps now we can proceed.

Mr. Allen: Mr. Chairman, I would like to make brief mention, because reference has been made to the attitude of the labour movement with respect to this question. We have in our kits a statement from the Ontario Federation of Labour that is critical of this bill on the same points that most of the health groups coming forward have criticized it.

I think a passage needs to be read in connection with the question of their opinions and their consultation with respect to this matter. I want to quote:

"The minister, in a speech to the council of governors of the Canadian Centre for Occupational Health and Safety, declared his personal commitment to the process of consultation and co-operation in which the 'stakeholders must be totally involved,' and yet at no time prior to the introduction of Bill 194 was this issue ever raised with the Ontario Federation of Labour. As well, the Ministry of Labour has established a Joint Steering Committee on Hazardous Substances in the Workplace, which is a joint labour-management committee mandated to develop regulations concerning the control of all hazardous substances in workplaces in this province, and yet the government did not see fit to bring their proposed legislation before this committee for review, approval or even information."

Alongside any commentary about the role and attitude of labour with respect to this question, I think it needs to be underlined that never was its voice asked for input on this particular piece of legislation. Had it been asked, it is quite clear the OFL would have taken substantially the same position on this issue that most of the groups before us today, at least, have adopted.

The Acting Chairman (Mr. Kanter): I think members have had an opportunity to question and comment, Mr. Repace. Do you want to continue with your deputation, Mr. Mahood?

Mr. Swenor: I will try to restrict my comments specifically to the amendments we would be looking for in the legislation. As noted, our brief has been accepted as read and there is background information in terms of the health effects of involuntary smoking and the necessity for separate ventilation. Our specific comments in terms of amendments start on page 11 of our brief and I will outline those.

Section 1: Looking at definitions or the absence of some definitions, the most glaring absence, as has been indicated by other health groups, is the failure to state a definition of what is a designated smoking area. As a result, we feel the key part of the whole legislation is missing. There is nothing to prevent somebody from designating anything he wants as a smoking area and being part of that 25 per cent. For instance, somebody could accept the tobacco industry's suggestion of simply drawing a circumference around any smoker. One could be even more ridiculous than that, if one wanted to, and avoid any practical impact this legislation could have.

In our view, what that means is that you are basically giving employers



an opting-out clause, "If you want to do something to protect the health of your employees, you can do it," but of course they can already do that. "If you don't want to do anything, you don't have to because you can simply designate each smoker as a mobile smoking area or whatever else you want to do."

That absence of a definition is in our view a glaring flaw and something that has to be dealt with if we want the legislation to have any real force and effect. It is certainly a loophole we do not allow in other legislation. We do not state in our labour standards legislation or the Occupational Health and Safety Act that if you do not want to comply with this legislation, you do not have to, which in effect is what is happening here.

In terms of what we would like to see in a definition, I think we are consistent with what has been said by other health organizations and consistent with what we know about environmental tobacco smoke. It has to be an area that is enclosed. It should be clearly marked and an area that is not ordinarily occupied by nonsmokers. It must be separately vented to the outdoors.

Enclosure simply makes sense. Otherwise, the smoke is going to simply drift all over the workplace. We do not want to be in the situation where somebody can accept the tobacco industry idea that if you have two people sitting next to each other and one is a smoker and one is a nonsmoker, you can draw a circle around the smoker and you have complied.

In terms of having something that is clearly marked, it is really the idea, as indicated by the Canadian Cancer Society, of letting people know what the rules of the road are. Let them know where the area is they can smoke. We have found in municipal bylaws across Canada and around the world that putting up signs is a very useful exercise. Most people comply very readily once they know what is expected of them. It is very much a self-enforcing piece of legislation.

Certainly, you do not want that smoking area to be in an area that is ordinarily occupied by nonsmokers. You do not, for instance, want to say, "We will allow you to go to the mail room to smoke," even though the mail clerk is allergic to tobacco smoke, or, "You can smoke in with the computers," if everybody has to go in there from time to time. You want an area that is not ordinarily occupied by nonsmokers.

Separate ventilation, I think, is the issue that has raised the most concern, and the concern has been one of inconvenience, that we would be inconveniencing employers or perhaps smokers by saying that unless it is a separately vented room, there will be no smoking in the workplace at all. Our view is convenience is a two-way street. If you decide you do not want to inconvenience employers or smokers by saying either the smoker has to go outside or the employer sets up a separately vented room, you are causing other inconvenience. You are now inconveniencing the vast majority of members of the workforce, who are nonsmokers and who are being involuntarily exposed to known toxins.

We also know that in terms of convenience and inconvenience most employers find it very easy to go entirely smoke-free. We have had lots of evidence of that in the testimony I have heard in the last couple of days. We also know that if an employer decides he wants to set up separately vented rooms, we are not looking at terrific costs in the vast majority of cases.

In fact, there have been some very good analyses done indicating that

you actually end up saving money, and that is because, as has been indicated, smoking in the workplace causes various costs to an employer. Those include such things as cleaning costs, wear and tear on machinery, increased absenteeism, lower productivity. Employers find that when you eliminate smoking from the main work area, you save a lot of money.

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We feel this is not a tremendous imposition. Certainly we do force inconvenience, if that is the term we are going to use, on places of employment with all sorts of rules we have. It is an inconvenience to have to pay people a minimum wage. It is an inconvenience to tell people you should not have asbestos, radon or various other things in your workplace. It is certainly an inconvenience to tell a town that your sewer system and your storm sewer should be separate. But we make many of those decisions in the case of environmental issues. This is another environmental issue. We know it is an important environmental issue. It makes sense.

In terms of other definitions, there is no definition now in the legislation of what an employer is. We feel that is very important because you want to know who has responsibility under this legislation. The examples come readily to mind of many places where it is very hard to say who exactly the employer is. A large corporation is a classic example. Who is the employer of the classic mail clerk in a large multinational corporation? Is it the immediate supervisor, the chairman of the company in the head office in Europe or what? You have various layers of responsibility. I think it is a matter of borrowing a definition that has been used, say, in the city of Toronto bylaw on smoking in the workplace.

Also in terms of definitions, we feel the current definition of "enclosed workplace" should be split in two so we can deal with each of those words separately. I think that makes for easier interpretation. I think all of us lawyers enjoy having things dealt with separately, if at all possible. In the definition of "workplace," we would consider it important to look at an amendment to talk about a place of employment, instead of talking about an area in which someone works. I think clearly that is what is meant by the Ministry of Labour.

But we do not want to be in a situation where somebody, being in a huge firm and it is just one office, can say, "My office is a workplace and therefore I can designate what part of it I want, according to whether it is smoking or nonsmoking." We would like to ensure that deals with the entire place of employment. For instance, if you have a 200-man law firm, you are dealing with one entity, not however many private offices you happen to have.

Section 2 gives concern in terms of clause 2(2)(b). This is a section that deals with exclusions to the act and it deals with an exclusion for an area used primarily for serving the public. That is a very broad definition. That gets us nervous. What is meant by it? I do not know. I am not sure what the Ministry of Labour meant by that, but in a service-oriented economy virtually all places of employment are used primarily for serving the public, whether directly or indirectly. That is clearly not what is meant.

We would like to be in a situation where we know precisely what this legislation refers to. If somebody tells us there is a problem with smoking in a child's day care centre, we want to know whether that is included or excluded. If it is not included here, it is nice to know that specifically so we then know which minister we can run after to get protection. We do not want

to be in a situation where the Minister of Labour says, "That is not in the legislation," and the Minister of Health says, "Talk to the Minister of Labour."

We would like to have specific exclusions. If it is meant to exclude retail stores, if it is meant to exclude educational institutions, hospitals or day care centres, we want to know what they are. It simply aids interpretation. We want to know where we stand with the legislation.

On section 3, which deals with the 25 per cent rule, we feel this whole issue of 25 per cent really is not important. What we are looking at is the occupational health and safety issue. If we have a good definition of a designated smoking area, I think that solves the problem. For instance, if an employer has an office with an empty warehouse out back, the warehouse is separately vented to the out-of-doors and there is nobody in it, and he says, "I want my employees to go out back if they need a cigarette," we do not want to be in the position of the Minister of Health having officials showing up with a tape measure and saying: "This warehouse happens to be 35 per cent of your total floor area. Therefore, you are in violation of the law."

We want to be in a situation where we are protecting health, not dealing with percentages. I think we could simplify the legislation considerably by ensuring that we are protecting health and are not having to worry about whether something is 24 per cent or 26 per cent of the total floor area.

On section 8, dealing with fines, we agree with earlier submissions that the fines, at least in the case of employers, should be brought into line with what we are dealing with under the Occupational Health and Safety Act, a maximum fine of \$25,000; simply, again, to be consistent with what we are seeing with other legislation.

Section 10, dealing with municipalities and what municipalities can and cannot do: I suppose we have problems both ways on this. Clearly, what we want to see is good provincial legislation across the board. We do not want to be in the situation where we have 800-and-some-odd different pieces of legislation across Ontario. That is a terrific problem. It is one we certainly see in areas like Metro Toronto, the Ottawa area or the Kitchener-Waterloo area, where a lot of people do not even know which municipality they live in. They do not know which side of the street is Nepean or Ottawa.

Interjection.

Mr. Sweanor: If they are lucky—

Interjection.

Mr. Sweanor: Yes, that is right.

It has been fascinating the number of people who have told us they really appreciate the city of Toronto smoking-in-the-workplace bylaw because their place of employment went smoke-free as a result. You say, "Where are you calling from?" They say, "Brampton." The knowledge is loose.

Having just moved to Ottawa, I do not know where the boundary is in Nepean. I may or may not be one of your constituents.

Interjection.



Mr. Swenor: That is right. He will knock on my door.

It is a concern because you end up with legislation that varies greatly. You can understand the concern anybody working for a health organization would have if somebody says: "What is my legislative protection? I am calling from"—whatever municipality. It is certainly preferable, when you are dealing with issues of occupational health and safety, that we have consistent legislation. We do not want to have, say, different levels of protection from other toxic elements in the workplace, ones that differ whether you are in Hamilton or Burlington.

That said, if we are in a situation where the province is not going to be giving complete protection from the hazards of secondhand tobacco smoke, the legislation, as section 2 is currently drafted, does not give any additional authority to municipalities other than what is already there. What is already there is that a municipality must come to the province seeking authorization to bring forward things like the smoking-in-the-workplace bylaw that the cities of Toronto, Markham and Etobicoke have.

The delay is often two years; it could perhaps be more. We do not want municipalities to have to go through that delay. They make the decision. They want to give protection to the people in their municipality. If, for any reason, the government of Ontario decided not to do that across the board, municipalities should not be subject to that sort of delay. We would be looking for an amendment to, say, subsection 10(2) that would specifically allow municipalities to pass legislation to protect their citizens from the health effects of secondhand tobacco smoke.

A further point, two in fact, that are not currently dealt with in the legislation at all: One that has been mentioned is the no-reprisals clause. We too are getting calls from people who have been dismissed because they have been trying to enforce their right to a smoke-free work environment. That should not be happening. We would like to ensure this legislation protects people from that. We are in total agreement with earlier statements that have been made about that. I think you can borrow clauses from things, such as the Occupational Health and Safety Act, to do that.

One final comment: This is something that has been dealt with in other legislation. It is the question that if you are not going to be giving complete protection from the health effects of secondhand smoke, be careful we do not pass legislation that will actually take away some rights that some people already have. We would be looking for the classic boilerplate clause, which has been used in things like the Non-smokers' Health Act federally, something along the lines that, "Nothing in this act affects any rights to protection from tobacco smoke at common law or any other act of Parliament or of a provincial Legislature." The same sort of boilerplate.

We want to make sure that somebody who has the resources, the gumption that he is going to enforce his common law right to a safe and healthy workplace is not going to get thrown out of court on the basis that the province has passed a statute and the statute takes precedence over common law: "I am sorry. You are out of luck because the province decided it was not going to give you the sort of protection you think you deserve."

I think that is a very simple thing. That is probably just one of the other oversights, but it would be a very easy thing to put into the legislation, to ensure that people get a maximum amount of protection. Under no circumstances would we like to see legislation pass that while not giving



tremendous rights to people, is actually taking away rights that, for many of them, already exist.

The Acting Chairman: Members of the committee, we have about 20 minutes scheduled. I know Dr. Goodyear has been here, waiting quite patiently, and people may have questions of Mr. Sweanor. Do you want to hear from Dr. Goodyear before asking questions of both? Would that be satisfactory?

1640

Dr. Goodyear: First, I apologize to the committee. It appears, from what Mr. Decker tells me, that the mail seems to have lost both my brief and all the scientific papers that accompanied it.

The Acting Chairman: It is federal jurisdiction. I hate to say that, but it is federal jurisdiction.

Dr. Goodyear: I would also apologize that at the time I sent you one of the two briefs I have submitted from Physicians for a Smoke-Free Canada, I still had not officially heard from two other organizations I was representing, but I did hear from them this morning. Both the Ontario Dental Association and the Registered Nurses Association of Ontario have asked me to appear on their behalf and they agree completely with everything in the briefs. They have asked me to speak on their behalf, but unfortunately they are not able to send any representatives here today.

As well as Physicians for a Smoke-Free Canada, I am representing the Ontario Cancer Treatment and Research Foundation, the Hamilton Academy of Medicine and the Hamilton-Wentworth Regional Interagency Council on Smoking and Health.

First, the most important people I represent and the reason I am really here is a group that does not really have an organization, my patients and their families, who continue to ask me: "Why doesn't the government do something? Why are my friends and my relatives dying unnecessarily?

The other group is those people who come to me and who do not want to be my patients. They are people who come to our smoking cessation classes, many of which are organized within workplaces in Hamilton; people who want to try to quit cigarette smoking and who ask me to do something about trying to make their workplace smoke-free so they can be helped to give up cigarettes.

There is no doubt in my mind that the employees of those organizations which have already banned smoking completely in their environment find it much easier to comply with the recommendations that we suggest for quitting smoking.

Dr. Ashley has outlined very well the weight of the evidence, and despite what the tobacco companies have told us and other organizations, that weight is very weighty indeed. I am sorry, again; that should have come to you. Perhaps I would add, to all the enormous reports Dr. Ashley has shown you, some local ones. For instance, it was in 1970 that a report of the House of Commons, the Isabelle committee, made recommendations that smoking should be removed from the workplace. We had two reports recently from the federal government, one called Smoke in the Workplace and the other Smoking and Behaviour of Canadians, which have both not only recommended the removal of smoke from the workplace, but have looked at the feasibility project of the

Canadian federal public service and shown how effective removing smoke from the workplace is and how feasible it has been; and so it goes on.

You have heard many facts over the last few days. There are just a few facts, as we are in a wrapup session really at the moment, that I would like to leave with you. I have concentrated those facts on what I see happening in Ontario; they are not necessarily America- or Canada-wide figures.

We are talking about 13,000 people who die in Ontario every year from the effects of tobacco smoke. You may say, "Well, we are here to talk about environmental tobacco smoke," but as I shall come back to, policies that restrict smoking in the workplace will help people to quit smoking and will reduce the number of direct deaths of people who smoke.

A figure we do not hear much is that 2,500 babies die every year in this province, either as miscarriages or as perinatal deaths, because their mothers smoke. That should be added to that figure. Finally, we have a figure of 1,500 people who die in this province unnecessarily every year who have never smoked but who work with a smoker, sleep with a smoker, or live with a smoker. This gives us a total figure of 17,000 unnecessary deaths in this province every year, many of whom I see; many of whom come from an area that, Mr. Miller will be glad to hear, includes many tobacco farmers. I am very well aware of the plight of the tobacco farmers and I am very sympathetic to them, but ineffective legislation in this area will not help tobacco farmers.

The Ontario fire marshal has reminded me—and any member here is free to examine his report—that there are 2,000 fires a year directly related to the use of cigarettes in this province. The figure may be much higher than that, because his investigators can only definitely ascertain the cause of fire in about 50 per cent of cases, so that is a very conservative estimate. The figure may be twice as high as that. Fifty people die in fires in Ontario every year because of careless smoking; another 330 are badly burnt; and the total cost is \$15 million. That is just those fires that can be directly and unequivocally attributed to careless smoking. About 40 per cent of those fires occur in the workplace and about the other half in private residences. Indeed, the Dominion fire commissioner, his federal counterpart, has said that smoking is the leading cause of fires and fire-related deaths in Canada.

You have heard much about the chemistry and the physics of tobacco smoke. Let me just remind you of a couple of things about tobacco smoke.

Formaldehyde: How many people in the general public realize that formaldehyde is a byproduct of tobacco smoke? How many of those people had urea formaldehyde foam stripped out of their houses in a desperate attempt to reduce the amount of formaldehyde around them, yet allowed people to smoke in their houses? One, at least.

Cyanide: How many people threw out the grapes from their refrigerators because of rumours that they could contain cyanide if they came from Chile, yet smoked cigarettes that could produce cyanide?

How many people wonder about our nuclear power reactors at Pickering, yet smoke cigarettes that produce polonium 210, a radioisotope?

How many people worry about arsenic in the water supply or in sheep dip, yet smoke cigarettes or breathe in other people's cigarette smoke that contains nickel, cadmium and arsenic?

Finally, there are two critical ingredients of tobacco smoke, naphthylamine and aminobiphenyl, which hazardous workplace regulations tell us are completely unacceptable in any quantity whatsoever in the workplace, yet these are produced regularly from tobacco smoke.

We hear figures such that there are about 4,000 chemicals in tobacco smoke, the health effects of many of which are not known. We just do not have the resources to be able to study all of them, but 54 of them are definite carcinogens, that is to say, chemicals that directly cause cancer in man and animals.

Many of them are equally important even though they are not carcinogens. They are what we call co-carcinogens, that is to say chemicals in the environment which, when combined with an industrial byproduct—An obvious example is asbestos; we heard from the miners this morning how a combination of cigarette smoke and asbestos produces a health effect that is much greater than either alone.

Finally, we have many products in tobacco smoke which are called promoters. These are chemicals that, once the cancer process is initiated, help it to grow much more rapidly.

What about the economics of tobacco smoke in the workplace in Ontario? We have calculated that it costs \$10,000 per year to hire a smoker compared to a nonsmoker. That is the cost in terms of loss of productivity, damage to equipment, depreciation and disability. I would remind you that a smoker in the workplace has twice the absenteeism of a nonsmoker and three times the chance of dying while he is in your employment.

What is happening out there in the workplace? We keep hearing about the rights of smokers from the tobacco industry. They appear to be representing the rights of smokers in the workplace. Maybe they should ask the worker.

There have been many surveys in Canada, particularly in the labour force all over Canada, looking at attitudes to smoking and to secondhand smoking in the Canadian workforce, where 80 per cent of total exposure to tobacco smoke occurs. We know the nonsmoker working in an average office that allows the presence of tobacco smoke has measurable damage to his lungs equivalent to smoking 10 cigarettes a day. Greater than 50 per cent of employees in Ontario believe that their productivity is adversely affected by the presence of tobacco smoke in the environment. Although 20 per cent said they were not bothered, 25 per cent said it was an annoyance, 25 per cent said it was a major annoyance and 30 per cent said it was a major discomfort.

In a Department of Health and Welfare report, 38 per cent of all employees were found to have medical conditions that were unequivocally aggravated by the presence of tobacco smoke in the environment; 67 per cent of employees believed that environmental tobacco smoke produces adverse effects; and 67 per cent also believed it should be eliminated from the workplace; 66 per cent believed that in cases of conflict, nonsmokers' rights should prevail.

Are the suggestions being made by the health and medical community to you in the last few days about the total elimination of smoke from the workplace radical? I say they are not. They are purely consistent with the legislation we have at the moment that is not really enforced.

We have large amounts of legislation on occupational health and safety and their regulations, such as the Health Protection and Promotion Act. We



live in an era at the moment where we have seen considerable amendments to occupational health and safety regulations. Particularly, we live in an era called WHMIS, the workplace hazardous materials information system, or the right-to-know legislation. We also have amendments to legislation recently which allow workers to refuse to work in a hazardous environment.

These regulations are not being enforced properly, because the contaminants from tobacco smoke, which are hazardous products in that environment, are not being tested for regularly.

I believe, as Mr. Allen has said, that if all employees in Ontario were aware and were made aware, as is their employers' obligation, of these hazardous products in the workplace, they would refuse to continue working under those conditions.

You may say that these regulations do not specifically mention tobacco smoke, but they mention many of the ingredients in tobacco smoke that we have covered. They do mention those products covered by the federal Hazardous Products Act. We are very privileged to have with us here today Lynn McDonald, who is an expert on legislation in this area and who was instrumental in getting Bill C-204 passed and getting royal assent last year. It will come into force this year and includes in it the provision for listing tobacco smoke as a hazardous product. Really, we are simply asking for legislation which tidies up the existing situation and is consistent with other legislation we have.

The Minister of Labour has made some very important statements about this bill in the first and second readings. He has said that the government of Ontario believes a smoke-free workplace to be the norm and a smoke-free Ontario to be the goal. Those are very important statements, and they are landmark statements. Unfortunately, the bill his department has drafted cannot possibly achieve those aims.

I believe the bill as drafted is ineffective and probably counterproductive. Already I have had a number of calls from municipal legislators wondering whether they should withdraw their own plans to go ahead with legislation in this area which would be much more effective, because they believe this bill fills the case, and that is not so.

I am concerned that because of the minister's statements we can all see industrial chaos in Ontario if workers are made aware of the hazardous products in their environment. The minister has effectively removed major barriers to grievance procedures along the grounds of hazardous products in the workplace by stating that a smoke-free workplace is the norm, something with which we would completely agree, but it has not necessarily been accepted by the Ontario Labour Relations Board up to now. Now workers in Ontario have much stronger grounds to file grievances and other common law and statutory litigation.

Concerns of the organizations I represent are similar to those you have heard today. There are two ways of controlling a public health hazard, whether it be smallpox or environmental tobacco smoke. One is to eradicate the source, and the other is to quarantine it. This bill does neither.

We are not concerned with the percentage of the workplace that is being designated smoking or nonsmoking. The key issue is that tobacco smoke has to be isolated. It has to be totally enclosed and ventilated to the exterior or eradicated completely. We would much prefer the latter, because all people who



work in this area find that it is much easier to enforce, that employees prefer it, it is more economical and basically it just works better. You may ask about its feasibility. We have here the federal government report showing that it is not only feasible but effective in the federal public service.

I have sent to you, which unfortunately you have not received—I shall make sure you get it tomorrow—a report from the Australian public service, which has had these regulations in force somewhat longer and which has shown major reductions in the total number of cigarettes smoked by smokers, particularly heavy smokers, not only in the workplace but their total cigarette consumption, and an increase in their quitting rate. It is a major public health issue.

Does it work locally? I refer you to an article in the Globe and Mail called "Smoke Without Fire: Smokers May Be Pinned Down but They're Not Putting Up Much of a Fight." I think that pretty well sums up what we have seen with all the legislation in this area, that basically you get a few grumbles when these things come in. Remember that 85 per cent of smokers have said they think this sort of legislation is required and will help them with their addiction problem. Therefore, we do not believe the feasibility or enforcement is a major problem.

We have some concerns about definitions, but I think David Sweanor has addressed those in great detail and I will not dwell on them.

We also have major concerns about the clause in the legislation that refers to public access in the workplace.

I feel that since the Ontario government has followed the federal government in controlling smoking within its own jurisdiction and has provided an excellent standard for the public service, to provide less for other workers in Ontario is discriminatory, and we have heard much of discrimination today. To fail to provide any protection at all to those workers, and many workers in Ontario deal with the public, to fail to provide them with any protection is certainly discrimination.

We submit that the ignition and combustion of tobacco products, a major source of hazardous chemical pollutants and a major fire hazard, has no place in the workplaces of this province. In principle, this is probably the most important piece of legislation to come before this committee, the most important piece of public health legislation this Legislature has ever seen, and is likely to become a model throughout the world.

We heard earlier today how many other Canadian provinces are focusing very closely on the proceedings of this committee because they will be adopting similar legislation, and it is not just within Canada. A forthcoming conference in the near future, the World Conference on Smoking and Health in Australia, is watching the Canadian model very closely. They have invited many people who have given testimony to you in the last few days to come and tell them how the rest of the world can follow the example and adopt the model public health legislation that Canada is either adopting or about to adopt. So let's ensure that this bill is given the mechanisms to fulfil its promise.

The passage of legislation removing such a major hazard from the Ontario workplace will send a clear message to the people and especially the children of this province that this government and this Legislature can no longer tolerate the continued, uncontrolled use of an addictive drug in the workplace. Our recommendations to you are to provide legislation that will

effectively remove and eliminate tobacco smoke from the workplace given, as we have heard, that ventilation does not work.

Mr. Allen: After such trenchant presentations, it is difficult to know what to ask. The case seems so conclusive from our panel that it is almost redundant to try to phrase a question. I can only hope that the committee, as it takes into consideration, in particular, this wrapup testimony which we heard in the last few minutes, will undertake to substantially revisit this legislation, if I can put it that way.

I hope we attempt to build into it some of the things that obviously the world of health professionals, the world of concerned working people and the world of concerned employers would like to see in place to regulate the workplace with respect to the presence of tobacco smoke, the carcinogens and the dangerous pollutants that it presents and, as Dr. Goodyear said, tidy up the many interplaying elements of health and safety legislation and tobacco restraint legislation and so on that are out there at the moment or are potentially out there, with the passage of such a bill. I think that is a major challenge for us. I hope we will rise to the occasion.

Mr. Owen: I have a very brief question. Did you identify the numbers that you represent in your organization of Physicians for a Smoke-Free Canada? If you did not, could you do that and relate it particularly to this province rather than the nation?

Dr. Goodyear: Physicians for a Smoke-Free Canada overall, which is a fairly new organization founded in 1985, has a membership of about 1,400 of which 700 come from Ontario, but that membership number is rising rapidly with a great deal of interest in legislation, particularly within this province.

Mr. Owen: What percentage would that be then of the physicians in the province?

Dr. Goodyear: The Ontario Medical Association represents 80 per cent of the physicians in Ontario. I represent 800 physicians in Hamilton where I am the spokesperson for the Hamilton Academy of Medicine on tobacco-related issues.

Mr. Owen: Is there unanimity in your presentation for all of the group?

Dr. Goodyear: This is a motherhood issue. I do not think doctors could ever be more passionate about any subject other than maybe their incomes.

Mr. Owen: I will leave that.

Mr. Sterling: Thank you very much for being with us today. I am very much impressed with your presentation.

The desire of many of the groups that have been before us is to just say: "Ban smoking in the workplace, period, end of case. Get on with it and over a period of time. Do it." If this committee chooses otherwise and takes the second choice, are there certain kinds of workplaces you would recommend where we consider doing that?

When I was dealing with this same issue some two years ago when we had public hearings in September 1986 dealing with Bill 71, there was a feeling at that time, for instance, that particularly where children are exposed to

cigarette smoke, they do not have the same capability of fighting off these chemicals. We talked about day care centres and schools. Are there any other suggestions you might have?

1700

Dr. Goodyear: I respect your experience in your area considerably and I know you have been a pioneer in this area. Obviously the areas that we would be most concerned about would include, as you say, any educational institution, all the way from day cares to colleges and universities. I particularly emphasize the day cares, since the Liberal government has been concerned about preschoolers too.

In fact, they have done surveys among preschoolers which produced appalling statistics, that nearly 75 per cent of preschoolers have actually tried cigarettes at some stage. When a number of those were interviewed about whether that was purely an experimentation, I think something like 80 per cent of them said they thought they were good and would continue to do so.

So many of our educational programs which are introduced in later grades in the school may be far too late in terms of the fact that these children have been exposed after all to models of cigarette exposure through their parents, people they respect, teachers, legislators or doctors, from a very early age.

Health care facilities and educational facilities are put very high on those lists. Obviously those industrial processes where either the tobacco smokers inhale carcinogens with industrial byproducts or where there are fire hazards like those we heard about this morning from the Ontario Mining Association must be very high on the list of concerns.

Mr. Sterling: You talked about the workplace hazardous materials information system legislation. During that debate in the committee of the whole House I introduced an amendment to that legislation which would have allowed any employee to demand from his employer a measurement with regard to tobacco smoke. I know how difficult that is; it is a difficult task.

Of course, I had other motives in doing that because the ultimate answer in dealing with that as an employer is to eliminate the smoke so that there is not any measurement necessary. Unfortunately, even in a minority parliament, I was unable to get the support of the other two parties in carrying that forward, which is something I still do not understand today, particularly with regard to the other opposition party at this time.

But having gone past that and into this legislation, I have got a great concern if this bill passes in its present state. As I have gone through these hearings and heard more and more people talk about it, we are facing a bottom line between what Mr. Daigeler describes as a statement by the government that this is not a socially acceptable behaviour in the workplace—which is a positive, and I agree that is a positive—and more and more negatives emerging in going ahead with a faulty Bill 194.

I would like any of you at the table to state your position in terms of the bottom line of dealing with this legislation.

Dr. Goodyear: You asked me about the WHMIS. There is one curious twist to the whole WHMIS issue—and I am sorry that tobacco manufacturers are not here to answer questions about this—and that is the fact that in tobacco



manufacturing plants smoking is banned because it is considered to be harmful to the very delicate machinery which produces cigarettes.

Indeed it was this provision that sank the case of a large corporation, namely, Bell Canada, when an employee tried to get protection for herself from smoking. It was discovered that the corporation would not allow smoking around its delicate switching equipment, but apparently that was okay for humans. As the judge in the case said, "Electrical components can be replaced, but bits of human bodies are hard to obtain."

The Acting Chairman: Members of the committee, we are very rapidly approaching our five o'clock deadline. I understand that Mr. Mahood has asked if he could make a one-minute final, closing statement. Is that agreed and then we will wrap it up?

Mr. Mahood: In response to Mr. Sterling, I think I heard Dr. Ashley say that her organization is opposed to this legislation as it stands. Our bottom line is that we are opposed to the legislation as it stands. There is one key fact which, if we can get Mr. Repace to answer just before he catches a plane, is at the bottom line of it all. In our brief, at page 4, there are two key questions from studies published in reputable, peer-reviewed scientific journals that are attributed to Mr. Repace.

One of them is the risk for nonsmokers. He is talking here about a risk depending on a ventilation of 250 to 1,000 times. What I would like Mr. Repace to mention in closing, because there have been questions here and questions elsewhere about whether or not ventilation will solve the problem, and that is a key question that has not been addressed, is whether it is possible, even in modern buildings, for ventilation to address the problem and to bring the carcinogenic risk down to acceptable levels which have been established for other carcinogenic risks. It is on that basis that we oppose the legislation. Would Mr. Repace address that just briefly?

Mr. Repace: Surely. In 1983 I was invited by the American Society of Heating, Refrigerating and Air-Conditioning Engineers to a meeting on the beach in California, at the Miramar Hotel, with a number of other national and international experts on ventilation in buildings. It was an engineering foundation conference on management of atmospheres in tightly enclosed spaces.

I was asked to address the issue of ventilation to control smoking in the workplace. I constructed what we call a model workplace, an ideal workplace which has an occupancy of seven persons per 1,000 square feet, one third of whom are smoking, and ventilated according to the recommendations of the society of ventilation engineers. I was able to give a plot, which I have in the paper I will give you called Effect of Ventilation on Passive Smoking Risk in the Model Workplace.

It was a plotted ventilation rate versus cancer risk and relative to the maximum acceptable cancer risk for environmental carcinogens in air or water and food typically aimed at by US federal regulatory agencies such as the Environmental Protection Agency or the Food and Drug Administration, which is a maximum lifetime risk of one cancer death per 100,000 persons over a lifetime.

We would have, at the recommended ventilation rate that ASHRAE proposes for offices of 20 cubic feet per minute per occupant, a risk of about 2.5 per thousand. That is 250 times what we call the de minimis risk or maximum acceptable risk level. If a workplace were ventilated at the minimum



ventilation rate, which is common in cold climates such as Canada, five cubic feet per minute per occupant, you would have a risk of 1,000 times the de minimis risk.

If you tried to control that risk by ventilation, you would need a ventilation rate of about 5,400 cubic feet per minute per occupant, which I assure you would create a windstorm in a space and, in addition, would not be economical or even physically possible to produce with any ventilation system. So ventilation is not the way to control environmental tobacco smoke.

Air cleaning is also not the way. In 1984 dollars you can buy six air changes per hour for \$1,800. You would need 226 air changes per hour to get an acceptable cancer risk from environmental tobacco smoke in a typical workplace and that would cost, in 1984 US dollars, about \$28,000 per smoker. So you can see that we are just going against the laws of physics. The way to control environmental tobacco smoke is source control.

Mr. Chairman: I would like to thank our deputants, those who attended, and members of the committee and to remind members of the committee that we will be resuming our session with clause-by-clause study tomorrow at 2 p.m.

The committee adjourned at 5:08 p.m.



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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

SMOKING IN THE WORKPLACE ACT

THURSDAY, APRIL 20, 1989



Mr. Chairman: I had proposed to do that. The clerk advised me I should ask the general question first. In case it happened that there were no amendments until section 8, then we could say, is the committee ready to proceed to approve sections 1 through 7, but it does not appear that is the case.

Mr. Carrothers: I think we had the very specific answer from Mr. Johnston that there are lots of amendments.

Mr. Chairman: Lots of amendments. Let me put it the other way around. Are there any sections to which no amendments are proposed?

Mr. Carrothers: I think that is a difficult process because some of our amendments—

Mr. Chairman: Wait to find them as we go.

Mr. Allen: It will not heighten our sense of anticipation and suspense, but it may well be that as one proceeds through amendments to the specific sections that are proposed to be amended, there might be some impacts on other sections and therefore we would not want to foreclose on those sections too soon.

Mr. Carrothers: The wise counsel of Mr. Allen should be taken.

Mr. Chairman: Okay. If you will bear with me, I will try to keep this all straight.

Mr. Sterling: Just before we start, if some of my amendments do not receive passage by the committee, I may submit further amendments resulting from those particular votes.

Mr. Chairman: I understand.

Mr. Carrothers: Are we dealing with government amendments first on each section, or how were you planning to proceed in that regard? I just wondered if it might be appropriate, since we have some amendments coming from all sides that are similar, to deal with the government amendment to a section first.

Mr. R. F. Johnston: Take the government amendment, then the official opposition motion and then the third party motion.

Section 1:

Mr. Chairman: Do you have an amendment to proceed then?

Mr. Carrothers: Mrs. Sullivan does.

Mrs. Sullivan: Yes. I have an amendment to section 1.

Mr. Chairman: I understand Mrs. Sullivan is not a voting member of the committee, so we will need someone else to move that amendment.

Mr. Carrothers: If I may, I will move on behalf of the government.

Mr. Chairman: Mr. Carrothers moves that section 1 of the bill be amended by adding thereto the following definitions:



"employee" includes a person whose services are contracted for by an employer:

"employer" means a person who employs one or more employees or who contracts for the services of one or more persons."

Mr. Carrothers: I believe that is a matter just clarifying what an "employee" and an "employer" would be and that these terms have been taken from existing legislation that applies in the workplace, and therefore, using those terms would give consistency to those who have to enforce this legislation.

Mr. Chairman: I wonder if Mrs. Sullivan would wish to give some rationale to this.

Mrs. Sullivan: Yes. If I could add to that, these definitions that are proposed to be added to the bill follow very closely the definitions of "employer" in the Occupational Health and Safety Act. They do not include some of the definitions that would be superfluous—the "contractor" definition that is included in the other act—but they do provide a broader spectrum. Given that the inspectorate and the enforcement provisions of Bill 194 relate to the same inspectors who are inspecting under the other act, we felt that a definition of "employer" that was consistent with the Occupational Health and Safety Act would be appropriate.

Mr. Allen: I would like to move an amendment to the amendment.

Mr. Chairman: Mr. Allen moves to amend section 1 by adding:

"'employer' means the person who ultimately controls, governs or directs the activity carried on within the workplace and includes the person actually in charge thereof."

Mr. Allen: It appears to me that while there is some legitimacy to the definition of "employer" that derives from the Employment Standards Act or from the Occupational Health and Safety Act, in this particular case, one of the problems with the word "employer" is whether it means the person who ultimately controls the corporation that ultimately employs in a given workplace, or whether it refers to the person who is immediately in charge of the actual workplace.

I think that was the point being made by groups that made presentations to us, that lest there be any ambiguity who was being referred to, the definition should be both/and. Therefore, the definition I have used is the one that is employed in the city of Toronto legislation that was devised specifically to respond to the problems inherent in this kind of legislation when it comes to defining "employer."

While I have no problem with the technical definition of "employer" as in the government motion, the motion I present would by implication carry the weight of that other employment standards legislation definition, and at the same time specifically address the needs of this bill.

Mr. Chairman: Before I entertain your amendment to the amendment, I have to determine, are you attempting to substitute your definition for the one proposed or to add it to the definition.

Mr. Allen: I have no problem with adding it to it.

Mr. R. F. Johnston: That is the only way it is in order.

Mr. Chairman: That is what I was trying to determine.

Mr. R. F. Johnston: It should be an amendment to Mr. Carrothers's motion to replace, from the word "employer" on, Mr. Allen's wording, so the definition of "employee" stays the same.

Mr. Sterling: I am not so interested in that. I am just interested in getting the best possible definition for "employer" before we go through the semantics of dealing with it in terms of a formal nature. I also had a suggestion for the definition of "employer," which was "an employer means any person who has control and responsibility for the workplace," which I think is very similar to what Mr. Allen is proposing; perhaps he is more specific. I was just wondering if we could debate all three at the same time and then go through the semantics of putting forward the particular motion to deal with it.

Mr. Carrothers: You would have to move an amendment to the amendment.

Mr. Chairman: I am just clarifying this. As I understand it, Mr. Allen's amendment is an amendment by addition rather than substitution, so it is in order as an amendment to the amendment. Yours is basically a suggested alternative wording for Mr. Allen's.

Mr. Sterling: Effectively, that is the way it is.

Mr. Chairman: In debating the amendment to the amendment, you are free to suggest that as an alternative as part of the discussion, so let's have discussion on this then.

Mr. Carrothers: I am just wondering, do we now have an amendment and an amendment to an amendment?

Mr. Chairman: No, we have the amendment you moved and the amendment to the amendment Mr. Allen moved.

Mr. Carrothers: We do not have an amendment to the amendment to the amendment.

Mr. Chairman: No; a suggested alternative.

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Mr. Carrothers: I just wanted to establish who was on first.

I can appreciate the need to feel very specific here, but what I am concerned about is the actual practical use that will be made of this legislation in the workplace. I am concerned about getting many definitions about who might be responsible, because this legislation is going to be enforced by inspectors who are already going into the workplace to enforce the Occupational Health and Safety Act.

They are going to be dealing with one employer. If we have other definitions of "employer" in this legislation that differ somewhat from the Occupational Health and Safety Act, I am concerned that in some circumstances the nuances might pose a situation where one person with whom the inspector is dealing might say: "Hey, I am not the employer. It is this person over here because it is a little different."

I wonder if in practical terms we are not just adding a complication that is not making this bill any stronger. I think that there is a need for consistency across the board for the inspectors, so they do not have to worry who it is they are talking to when they want to enforce this legislation, and that we should use the same definitions that are in the Occupational Health and Safety Act that have been tested and are understood, rather than trying to refine them here and run the risk of introducing a complication that might end up defeating the purpose we are trying to accomplish.

I would not be supportive of the amendment to the amendment that has been proposed. I support my own amendment of course.

Mr. Allen: In response to that, it would certainly be useful to know what "employer" does mean in that practice. Clearly, there is some ambiguity none the less whether it refers to the person who is in charge of the immediate workplace and who might do the actual engaging of people for work, but it can equally apply to the corporate direction that oversees in turn a number of workplaces or a number of employment situations.

It is possible within the legislation and what it requires of employers for the requirements to be shuffled back and forth to make it clear that it is the responsibility not only of the ultimate controlling agent, but also of the person who is immediately in charge of the workplace to implement this legislation. It would seem to me to avoid that element of ambiguity, notwithstanding the usages of the Employment Standards Act.

Mr. Sterling: I would like the government to consider that perhaps we have a different situation here than in dealing with other kinds of legislation. I just want to read from page 4 of the brief from the city of Ottawa. They have had some experience in terms of dealing with this issue.

"It becomes complex when a multi-employer building is involved. In a multi-employer building the no-smoking ban within the workplace will force the smoking employees into commonly shared areas, such as halls, stairways, washrooms and where there is a retail component that opens on to a concourse, into these mall areas. This scenario has occurred in Ottawa where employers have instituted nonsmoking policies in multipurpose buildings."

What I would argue is that if you have a more generic "employer" definition, as Mr. Allen has put forward or as is put forward in mine, you would take in the situation whereby you have a multi-employer situation as can occur in different circumstances. You throw the "employer" label for the common areas actually on to the company that is managing that particular building. I would hope we would do that. That is just for discussion.

Mr. Carrothers: I can certainly appreciate the point being made, but I should remind Mr. Sterling that this is meant to apply in the workplace. In fact, areas that are primarily for the public are excluded, so those common areas, I believe, in these multipurpose buildings are not being covered by this legislation. It is dealing with the workplace.

I would submit that you would want to deal with the specific employer who is controlling the specific workplace within that multi-unit building, and therefore you would want to stay within the kinds of definitions we already understand. What you are really referring to are the public areas of the building that in fact this legislation is not addressing.

Mr. Sterling: I would argue in response that that is not necessarily



so. You can have in one office complex within the same room virtually four different employers who are involved on a contractual basis providing a service to a particular plant, and part of the contract is that they have office space in this particular area. What I think Mr. Allen is trying to say is that the person who is actually controlling that building is the person who ultimately has to answer with regard to this legislation.

Mr. Chairman: I think it would be helpful to hear from the representative of the minister, Mrs. Sullivan.

Mrs. Sullivan: I think that Mr. Allen's amendment to the amendment is superfluous to a certain extent in that basically the act is giving responsibility and directing responsibility for action to an employer. That responsibility is a legal responsibility. In consequence of lack of action, there are penalties and those penalties are legal penalties.

Therefore, it is the legal requirement of the employer to comply within his one workplace, if that is all he has, or several workplaces. That means that the direction would come from the employer who bears the corporate legal responsibility, as defined in the act, through his management for the actual worksite. I believe that the kind of suggestion you are making about actual onsite management is already an obligation of the employer under the definition of the act.

Mr. R. F. Johnston: I would be very interested to hear, as I am not as clear that it does that so neatly as does Mr. Allen's motion—or in fact Mr. Sterling's wording which I think is also better than the government's wording—I wonder if Mr. Kanter might tell us about the problems that the city of Toronto had with its particular definition, which has been in operation now since 1979 in this area. It deals with exactly the same kind of concerns, and I wonder why, when we have legislation as an example for us, we are not borrowing its model. What were the difficulties with this definition, Mr. Kanter?

Mr. Kanter: I am not aware—

Mr. R. F. Johnston: Since you have recently escaped.

Mr. Kanter: I think it is a little unusual, Mr. Chairman, for a member of the committee to put a question to another member of the committee. However, I am not aware of any difficulties in the city of Toronto's bylaw; nor am I aware of any difficulties with the provincial occupational health and safety legislation.

In fact, I put a question to the staff as to whether there were any difficulties in enforcing occupational health and safety with employers with multiple workplaces, and I am advised by staff that there are not any difficulties with the provincial model.

Mr. Owen: I just want to point out that I have difficulty with Mr. Allen's amendment because he is saying that the person who directs the activity of the person in the workplace—let me give an example: if it is a professional office and there are many professions there, the person who is directing the secretary, who hired the secretary and who is directing what the secretary is doing, may be that particular lawyer or accountant, whereas the amendment proposed by Mr. Carrothers says the person who is in charge of the employment place and obviously would have control over what is being grieved or the designated area rather than the lawyer or the accountant who is dealing directly with one secretary or whatever.



I really think that the simpler definition that we have suggested by way of amendment is going to encompass what you are driving at rather than going into more specifics, which I think is going to cloud it and let the person who is truly responsible escape.

Mr. Sterling: Could I ask a question?

Mr. Chairman: Yes.

Mr. Sterling: In the definition that has been put forward, what happens when there is one employee who is working off somewhere else on his own?

Mr. Chairman: To whom are you directing the question?

Mr. Sterling: To the parliamentary assistant.

Mr. Chairman: Okay. We will wait until she is attentive. Did you hear the question?

Mrs. Sullivan: No. I am sorry. I apologize.

Mr. Chairman: Mr. Sterling, would you repeat the question, please?

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Mr. Sterling: What happens if there is one employee—for instance, I am going to make an amendment to the definition of "workplace" so that it not only includes a structure but also includes any enclosed workplace, period, which I think would include such things as taxicabs, buses, etc. In that situation, if my amendment is accepted, what happens to a taxicab driver?

Mrs. Sullivan: I suppose with a taxicab driver it would depend on whether he was an independent or whether he was a part of a larger corporate entity. If he were an independent operator, he would be his own employer. If he were part of a larger corporate entity, he would be an employee.

Mr. Sterling: I guess what I am saying is that ultimately it only makes sense in a taxicab that the taxicab driver formulate his own policy and let the public know what his policy is, so that when people get into the cab, they know whether they are in a smoking or a nonsmoking taxi. We had some representation to us with regard to that.

My concern is that the person who is ultimately in control of those premises, and I think Mr. Owen was saying this, should be the one who takes the responsibility for enforcing this law. What we are trying to say is that it is not always the employer.

Mr. Carrothers: But is the legal responsibility not going to flow by virtue of the employment contract? If you want to be dealing with the employee and the employee only has any sort of claim against the employer, if you bring in outside bodies will you not be creating rights back and forth between unrelated parties? If you want to stick with that employment contract—this is workplace legislation—you want to stick within an employer-employee contract and not stray beyond it.

Mr. Sterling: Maybe the policy people could—

Mrs. Sullivan: We could refer it to the officials from the ministry.

Mr. Chairman: Mr. Clarke, could you assist us on these definition questions?

Mr. Clarke: Sure. I wonder if Mr. Sterling would mind putting the question again.

Mr. Sterling: Basically what I am saying is that I think our concern here is that an employer who perhaps has his own smoking policy but has an employee who is inserted into another situation is not given the ultimate responsibility for that employee's situation in that environment.

We are talking about contractual arrangements where an employee goes into another office and the person who is controlling that particular office has a very different smoking policy than the employer or does not have one or is not enforcing one, whereas his real employer who is in another city somewhere is in fact.

What I think Mr. Allen's amendment and my amendment would take care of is calling whoever is responsible for that area the employer and, therefore, ultimately having that person answer in terms of the legislation.

Mr. Clarke: I am going to ask Bob Blair to respond.

Mr. Blair: Mr. Sterling, we believe that our definition here, first of all, is broader than the common-law notion of employer-employee. It takes into account the independent contractor relationship. It is our opinion that it also takes into account any relationship where the services of an individual have been contracted for.

In other words, in the situation you are describing, the person who is likely in control of the workplace is an employer because he contracted for the services of an individual who at common law would not be his employee. It is our opinion that for the purposes of our legislation here, and the same goes for the Occupational Health and Safety Act, he is their employer and he is responsible for them.

That is certainly the intent, to make a very broad definition of the employer-employee relationship to take those situations into account.

Mr. Sterling: Mr. Chairman, I would prefer the amendment, but I think there are other issues where we are going to have to talk a little bit longer. Therefore, I am not willing to carry on the debate. I have said my piece and I think there is a problem with multi-employment situations which could be addressed by Mr. Allen's amendment.

Mr. Chairman: Before we vote on the amendment, Mr. Allen, do you have any concluding words?

Mr. Allen: One can go around in circles so many times, Mr. Chairman. The argument appears to me to be quite plain that there are not only multiple employment situations, but also very distant employers in many instances who are ultimately the responsible party, but there can be many sort of intervening persons with substantial and significant responsibility in a corporate structure.

If we are talking about workplaces, then it is not always the person who is in immediate charge who is the person who is ultimately in control. The person ultimately in control is the person who finally, of course, does bear

the legal responsibility that the parliamentary assistant referred to. But at the same time, there is the derivative responsibility on the part of the immediate manager, the immediate person in charge, and, therefore, the legislation can properly be addressed to him as the onsite person who has responsibility to act under the legislation.

That is the whole purpose of my motion, but I will have to leave it to the wisdom or otherwise of the members opposite to be sympathetic or otherwise to that train of reasoning.

Mr. Chairman: Okay. We are ready to vote then on the amendment to the amendment as moved by Mr. Allen. Do we need to read it? Is everyone clear on it?

Mr. Allen: Perhaps we should read it so that everyone is clear as to precisely what is intended.

Mr. Chairman: Mr. Allen has moved to amend section 1 by adding to the motion of the government the following words:

"'employer' means the person who ultimately controls, governs or directs the activity carried on within the workplace and includes the person actually in charge thereof."

All those in favour of the amendment to the amendment? Opposed?

Motion negatived.

Mr. Chairman: We are back to discussion on the amendment moved by Mr. Carrothers.

Mr. Carrothers: You can put the question on that as well, Mr. Chairman.

Mr. Chairman: Any further discussion? Are you ready for the question?

All those in favour of the amendment to the section? Opposed?

Motion agreed to.

Mr. Chairman: Further amendments to section 1?

Mr. Sterling: Yes. I had put forward two amendments that I referred to in section 1. One of those I am going to actually deal with in section 3, and that is the one dealing with a designated smoking area. I am going to introduce that under section 3 so I will not deal with that now but will deal with it later on the advice of legislative counsel.

The other section that I would like to amend is the definition of "enclosed workplace." I would like to simplify the definition and would be pleased to hear from either legislative counsel or the policy people their comments on it.

I feel that the present definition of "enclosed workplace" could in fact exclude certain kinds of workplaces. I am particularly talking of workplaces where you have vehicles that are moving within the province, although I do not think it is going to affect a great number of those enclosed workplaces—

Mr. Chairman: Mr. Sterling, would you put the motion and then make your comments?

Mr. Sterling: Okay.

Mr. Chairman: Mr. Sterling moves that the words "'enclosed workplace' means an enclosed building or structure in which an employee works and includes a shaft, tunnel, caisson or similar enclosed space" be deleted and the following substituted therefor:

"'workplace' means any enclosed place of employment and includes a shaft, tunnel, caisson or similar enclosed space."

Mr. Sterling: Basically what I do is I eliminate "enclosed building or structure," which I think widens the definition out to include situations where you would have vehicles that were on the move but people were involved in work on those particular vehicles.

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Mr. Chairman: I am just checking on whether the motion is in order, and it is. Discussion on the motion?

Mrs. Sullivan: Mr. Chairman, I wonder if we could refer to labour officials, as Mr. Sterling has requested, on this particular issue.

Mr. Chairman: Mr. Clarke, the parliamentary assistant is asking for your comments on this proposed amendment.

Mr. Clarke: As I understand Mr. Sterling's amendment, what it would do is take the definition of "enclosed workplace" beyond a building or a structure and make it include motor vehicles. Is that correct?

Mr. Sterling: As an instance, yes. I do not understand why someone who is not involved in a workplace that is enclosed but does not come within the definition of a building or structure should be excluded from the legislation.

Mr. Clarke: I think that is the difference. Bill 194, as it is drafted now, was meant to be limited to buildings or structures. The additional words "shaft, tunnel, caisson" were there to include similar enclosed places but the section was deliberately crafted not to include vehicles, which I guess is the only example you can give us of what would be included in your definition. Does that help, Mr. Chairman?

Mr. Chairman: That appears to be the difference. I guess the parliamentary assistant was looking for your comments on that.

Mr. R. F. Johnston: Tell her what to say. Bureaucracy can't do that.

Mr. Chairman: Further discussion?

Mr. Sterling: I guess there would be other kinds of situations which might arise as well, for instance, on a boat where there was work taking place. We have some examples of that on the harbourfront here in terms of some of those kinds of situations. I do not understand—maybe the policy people could help me—why you would exclude vehicles. Is there any particular reason?

Mr. Clarke: Bill 194 was being drafted at a time when a number of municipalities, for example, were beginning to put in place smoking bylaws or adopting policies for their own staff, as were other employers. There arose some difficult situations with respect to vehicles.



For example, you would have a truck driver, a backhoe operator and so forth, who was in that vehicle by himself. He is the only person who uses that vehicle, nobody else ever uses that vehicle, he happens to be a smoker, he is working outside, he has his window rolled down, all those sorts of things. They were facing situations where they were being required not to smoke when in no conceivable possible way, from their perspective, could they be impinging on the health of anyone else.

Obviously, there are other situations where you may have more than one user of that cab, but it struck us that what we were really trying to do was to deal with the concerns which have primarily come to the government's attention that were from people within enclosed buildings rather than with respect to vehicles.

That is my understanding of why the decision was made to limit it to buildings and structures and to allow the workplace parties to deal with the vehicle issue themselves and thus be able to be more flexible given the particular circumstance.

Mr. Sterling: I would argue in response that if there was a backhoe operator who was on his own and was operating a backhoe and he was a smoker, no one would care to bother him regardless of what the law might say or might not say. If in fact we did not have this what I think is a silly 25 per cent rule, we would not be faced with this situation. It is a problem with the structure of the legislation as it now stands.

My concern over people who are in vehicles, even in a boat or a plane or whatever you might have jurisdiction over, is that you are in an even more confined area of space than you are when you are dealing with buildings and structures and other things. Therefore, the opportunity for a nonsmoker to have problems is even greater than it is for the case you have covered. That is why I thought it would be a situation which we would want to address here in the Legislature.

Mr. Carrothers: Let me make one brief observation, Mr. Chairman. I just noted that the types of vehicles Mr. Sterling is mentioning, the taxis and so on, are, in fact, workplaces for the public. I would observe that this legislation is not dealing with those types of workplaces, so perhaps it is not the type of thing that we are attempting to deal with within this legislation.

I suggest that you also mentioned the point about who would care. I would think that if we did put this in place in the examples we were just given, technically the person is eligible for a fine. I am not so sure we want to put people in technical violation and put them through the rigamarole of declaring 25 per cent of their truck cab, measuring off the seat or whatever they have to do in order to smoke in their own truck cabs. I think it just leads us to a complication for no purpose.

Mr. Sterling: Well I—

Mr. Chairman: Just a minute, Mr. Sterling. Since it is your amendment, I will give you an opportunity to wrap up.

Mr. Allen: I am interested in the amendment. I am still trying to clarify my own thinking about it. I am not entirely clear what the sum total of legislation is that presently bears, for example, upon some of the conveyances that Mr. Sterling is referring to. Perhaps he knows and can tell

us, or someone else here knows and can tell us, what is the legislation that, in fact, governs ships, ferries, bus lines and trains with regard to smoking at this point in time? Is that entirely the responsibility of the employer at this point in time and therefore there is no consistent regulation?

Those kinds of conveyances are somewhat different than the situation of a trucker who is in his workplace behind the wheel in the cab of his truck and who, most of the time, is probably the only person who is sitting there; therefore it would be a little bit absurd to apply the whole weight of the legislation to him, but I can certainly see there may be other relevant situations that Mr. Sterling is trying to get at that are not currently covered and are important to get at to cover by legislation. I am wondering, does someone have some help they can give us on this particular point? I think there are some nuances that need to be addressed.

Mr. Clarke: Let me try to respond, Mr. Allen. I think we spoke a little bit about this on Monday afternoon when we were starting this. In terms of regulation of transportation, the bulk falls under federal jurisdiction. This is the easiest way, I guess, to explain this, by federal-provincial jurisdiction, and tell what we cannot apply it to in Ontario. Our labour legislation cannot apply to interprovincial transport. It covers most bus passenger companies, those that either run interprovincial schedules like Voyageur or those that are basically a charter business and it is a charter business that leaves the province. It does not apply to the CN-CP railway system or any of the American lines that come in.

We do have jurisdiction over the Ontario Northland Railway, because the province somehow owns it. We do not have jurisdiction over airlines. That all falls under federal jurisdiction. So with some relatively small exceptions—even in interprovincial trucking, so many of our trucking firms are engaged in interprovincial transport or cross-border transport that by and large the movement of goods or people falls under federal jurisdiction. That is what took us to our concern that what this would have caught was much more the person who is running equipment or running trucks just for their employer in that one locale rather than any of the interprovincial stuff.

Mrs. Sullivan: I think it is also fair to say that the provisions of the act later, which allow an employer to designate a smoking area, indeed, in a transportation area, has—we have seen where there has been a major effort to go for the no-smoking rule rather than to opt to allow smoking. We can see, GO Transit, the Toronto Transit Commission and Ottawa transit as examples of that kind of action that is being taken.

1500

Mr. Sterling: Notwithstanding that it appears not to be a major problem for our provincial government, because we do not have jurisdiction, I could turn that reasoning around to say, "There is every reason then for us to include it." But I guess my concern would be the situation where a person, by virtue of his employment, is forced to sit in a motor vehicle with another individual during most of his working day. Because there is a lack of thrust on the part of any legislator, the person is forced to swallow secondhand smoke all day while he is working there.

I think of our police. I think of people who deliver things. I think of people who are in armoured vehicles, for instance. I do not whether they have policies because of whatever they are doing. Because of the very high concentrations of tobacco smoke in those particular situations, I would think

they would need our help more, if we were doing it on a comparative basis, than people who are living in larger structures where there are larger spaces and there is an opportunity to get a few feet away from the smoker.

So that is why I would include it in this particular legislation and I do not think it is going to move the earth. We are not dealing with basically the taxi-cab situation. That is going to be dealt with by themselves, or on their own and by their employer or whatever. But it is dealing with the situation where you have to sit day after day beside somebody who smokes. I do not think a nonsmoker should be subjected to that.

Mr. Chairman: I thought you would be wrapping up, but Mr. Daigeler indicated he wished to comment.

Mr. Daigeler: Just very, very briefly and I think that point will be made several times. We must not forget that the most important phrase, I think, in this legislation here is subsection 2(1) which reads "No person shall smoke in an enclosed workplace." It is the basic objective of this legislation and certainly, if there is an objection from the employers, I think, under the guidance of this legislation I am sure there will be a reasonable push towards eliminating smoking totally in these vehicles that you are referring to.

Mr. Sterling: That is not what the legislation says. The legislation—

Mr. Chairman: Mr. Sterling, please go through the chair. Mr. Allen?

Mr. Allen: I am inclined to support Mr. Sterling's proposed amendment on the understanding that, within section 2 there would be an exemption that would state something like, "subsection 2(1) does not apply in any conveyance where the operator is the sole occupant of the workplace."

The individual operator would not be so subject to the weight of the law but, at the same time, if there were other persons in the cabs or wherever, the law would apply. It seems to me that clears up the nub of the problem we are dealing with and it does offer some relief in the circumstances that he is addressing, which I think are real concerns.

Mr. Chairman: I think we have exhausted this discussion. Are we ready for the vote? Okay, the amendment moved by Mr. Sterling was read out before. Is there anyone who wishes it read out again? Is everyone clear on what you are voting on? All those in favour? Opposed?

Motion negatived.

Mr. Chairman: Are there any further amendments to section 1 of the bill? Then we will move to amendments to section 2.

Mr. Carrothers: Should we pass section 1, Mr. Chairman?

Section 1, as amended, agreed to.

Mr. Chairman: I appreciate the coaching.

Mr. Carrothers: Any time, Mr. Chairman.

Section 2:



Mr. Chairman: Are there any amendments to section 2?

Mr. Allen: I have two amendments to section 2, Mr. Chairman.

Mr. Chairman: Mr. Allen moves to amend clause 2(2)(b) to read "in an area used only for serving the public."

Mr. Allen: That is altering the phrasing in the bill which says "primarily for serving the public."

Mr. Chairman: You have heard the amendment. Do you wish to open the discussion?

Mr. Allen: Yes, if I could simply say that there are a great many areas of workplaces which are involved in serving the public which often, by virtue of those circumstances, have much higher concentrations of smoke pollutants in the atmosphere than is the case in many workplaces. It seems to me rather unfair, unfortunate and discriminatory of the legislation to put the persons who work in those settings in a position of substantially less protection when they are, in fact, more in danger frequently in their situation.

While I appreciate the fact that serving the public entails some responsibility on the part of the employer for relating to people for whom he is not specifically directly in charge or legally responsible, at the same time, it seems to me that any legislation that is attempting to deal with the problems of workers coping with smoking in their workplace requires a somewhat different phrasing and that only those areas which are only used for serving the public, that are related to, adjacent to or somehow part of a workplace, should be exempted.

Mr. Owen: Can you give us an example?

Mr. Allen: Let us take an example of a bar or tavern, where you have workers who are moving in and around among tables, persons behind bars dispensing and so on. They are frequently very highly-polluted areas and this legislation gives no specific recourse for that. Some kinds of urban municipalities may have covered it by bylaws but others have not. There are situations in terminals of various kinds, for example, where you have persons serving at desks dispensing tickets, persons who may be selling wares in connection with those areas and, at the same time, they are used by the public as areas in which smoking does take place.

Because people are waiting around, an awful lot of smoking, in fact, is happening and, as a consequence, the air becomes pretty heavily laden. Those would be two quite clear examples, I would think. Then you have other kinds of examples which I am proposing to cover in another subsection as an amendment to this part, as well. One can think of workplaces, for example, that serve the public, such as hospitals, health care facilities, child care centres, schools and what have you, where the workplace is normally thought of as being the workplace of the teacher or the health professional and so on, but the public is there.

One could use the argument, under this particular phrasing, that those are there primarily for serving the public and therefore they would be exempted from subsection 2(1). I do not want that to happen and therefore I want this language to be tightened up so that it reads "only for serving the public" and not "primarily for serving the public."



Mr. Chairman: Is there other discussion? Do other members of the committee wish to comment? Mrs. Sullivan, do you wish to comment on this?

Mrs. Sullivan: I am interested really—Mr. Sterling also has an amendment to this section and he includes the word "primarily," which is included in the legislative drafting. I know that it is incorrect from a parliamentary point of view to take them both at once, but the—

Mr. Carrothers: Mr. Chairman, can we move to amend Mr. Allen's motion and get his on the table, as well, at the present time?

1510

Mr. Sterling: I think we are dealing with two different principles. I think what Mr. Allen is saying is that it is only serving the public. I think it is an interpretation of words between what is written—what I have and Mr. Allen has—in terms of doing it. My wording is there primarily because of the objections that were brought in terms of your almost being almost able to include all government offices as saying they are serving the public and if one person walks in it is very difficult for a civil servant to say he is not serving the public.

Mr. Carrothers: I just wondered procedurally, since if we deal with the motion on clause 2(2)(b), it might then not be in order for Mr. Sterling's to be dealt with. I thought the only way we might procedurally be able to deal with it is that we again have an amendment to the amendment to the amendment or the amendment to the amendment, otherwise we might preclude ourselves from dealing with Mr. Sterling's if we deal with Mr. Allen's.

Mr. Sterling: I think I can amend clause 2(2)(b) after.

Mr. Carrothers: I am wondering if procedurally after we dealt with an amendment if we do not preclude ourselves from going back to that subsection again.

Mr. Chairman: I do not think so.

Mr. Carrothers: Am I just being too—

Mr. Chairman: It is very nice of the Liberals to be concerned about Mr. Sterling's amendment, but I do not think it would preclude his moving his amendment.

Mr. Carrothers: We like to help.

Mr. Chairman: The clerk advises me that as long as the section has not been voted on in its entirety, we could entertain the second amendment.

All those in favour of the amendment moved by Mr. Allen? Opposed?

Motion negatived.

Mr. Chairman: Mr. Allen did you have a second amendment to that section?

Mr. Allen: I have one to that section.

Mr. Sterling: My amendment probably would be more logical to put forward at this—

Mr. Chairman: Yes. Okay.

Mr. Sterling moves that clause 2(2)(b) of the act be deleted and and the following substituted therefor:

"(b) in an area used primarily by the public."

Mr. Sterling: I am substituting the words "in an area used primarily by the public" for the words for "in an area used primarily for serving the public."

Mr. Carrothers: Legislative counsel might give us the benefit of an opinion as to how that varies the situation.

Mr. Chairman: How do you see this amendment changing the intent or the execution of this?

Ms. Hopkins: That is a difficult question.

Mr. Sterling: I suggest this is what I am after. Basically this answers two questions which I think the present wording "in an area is primarily for the serving the public" answers. I was thinking more of a situation where we have a counter operation in a particular business. When you talk about the area serving the public, I think that you might include both the area that is in fact walked upon by the public as well as the area behind the counter where the employees work.

I would hope that the employees behind the counter would have some benefit of the law with regard to controlling smoking in the workplace even if there was a choice to allow the public who are coming up across the counter from them to have an opportunity to smoke.

The second point was that raised by the Non-Smokers Protection Association in that the words that are presently in the government bill "used primarily for serving the public" could in fact include almost the whole workplace if some employer or somebody wanted to give a very liberal interpretation to whatever his work premises might be. In other words, "We are there to serve the public," is basically what a business might say. The fact that one member of the public goes into a certain section of the workplace on one or two occasions a year might bring that particular area into the exception in this section. Therefore, that is why I used the words I did.

Mr. Daigeler: I think that clarifies the intent of what was there.

Mrs. Sullivan: I just wonder if Mr. Sterling could add further to his remarks how he would see this operating in terms of restaurants, by example. Are you satisfied that your wording indeed covers restaurants?

Mr. Sterling: No, it would not cover restaurants because that would be exempted. As I understand the legislation, it would not cover a restaurant. It would cover the kitchen in the restaurant, but it would not cover the other areas.

Mr. Kanter: I was wondering if staff might advise us in terms of the current wording, without Mr. Sterling's amendment. He gave two examples. One was a counter operation, the behind-the-counter area, and the second one was private offices. Presumably you were talking about legal, medical, insurance or financial offices. It was my understanding that the current wording of the

act would not exempt the behind-the-counter operations or indeed what are generally private offices to which the public might be invited from to time, but whose primary purpose was to house a person in a place of work. I am just wondering if staff could comment on my understanding of how the law currently works with respect to the two suggestions made by Mr. Sterling.

Mr. Blair: Certainly. You are precisely right that the intent of the act was to exempt only areas where the public would normally and routinely go. A prime case in point, of course, is the public area of a restaurant or tavern. It was certainly never intended that anybody who could suggest that he was in some way serving the public in his little office somewhere in a building would be able to rely on this exemption. That concern has been expressed but that was not the intent.

The intent was precisely the same as the intent expressed in Mr. Sterling's amendment. Mr. Sterling raises an example of a counter service area, and I can think of an automobile parts department maybe, where customers walk up to the counter on one side and there are shelves and things on the other side where the staff works.

His point may in fact be well taken that with the government wording there will be an argument that the whole area was devoted to serving the public, even though the whole area was not used by the public. Certainly, the intention would have been that only the areas the public routinely had access to and which the public in fact used would be covered by the exemption.

Mr. Kanter: Given that the intent was to exempt only those areas that were, shall we say, routinely used by the public, and that both the government's version and Mr. Sterling's version have that same intent, which one would be clearer?

Mr. Blair: Subject to the comments by Ms. Hopkins, legislative counsel, it is my opinion that Mr. Sterling's version is perhaps clearer in that particular example, which might prove difficult, or at least raise an argument. In my opinion, his wording serves as well.

Mr. Chairman: Are you ready for the question?

Mr. Allen: I would also say that in terms of the balance of wording, when you talk about "an area used primarily for serving the public," the ratio of workers to the numbers of the public could be remarkably high and yet you have provided an exemption, whereas obviously the balance of impact would be heavily upon the workers involved. In Mr. Sterling's wording, "in an area used primarily by the public," it is obvious the balance of numbers lies with the public and the public involvement becomes much greater under that phrasing and shades the application quite considerably.

1520

Mr. Chairman: Is everyone clear on the amendment proposed? All those in favour of Mr. Sterling's amendment? Opposed?

Motion agreed to.

Mr. Chairman: I believe we have one further proposed amendment for section 2?

Mr. Allen: That is right.

Mr. Sterling: I also have an amendment to section 2 that I have numbered as section 3, and on the advice of legislative counsel, thought it would be more appropriate in section 2. That is the one that says "notwithstanding clauses 2(2)(b) and (c), an employer may prohibit smoking in all areas of the workplace." I will deal with that after Mr. Allen is finished.

Mr. Chairman: All right. Thank you for serving notice on that. I do not think we have a written copy of it, do we, Mr. Sterling?

Mr. Sterling: Yes, you do. It is under section 3 now.

Mr. Chairman: Mr. Allen, proceed. The clerk will find it for me.

Mr. Allen: I have wording that has been suggested by legislative counsel that is slightly different and somewhat simpler than the language I have in my circulated amendment, so I will read the version as altered by counsel.

Mr. Chairman: Mr. Allen moves to amend section 2 by adding thereto:

"(1a) Despite subsection (1), no person shall smoke in any hospital, health care facility, child care centre or school attended by minors."

As I understand it, you are adding a new subsection 1a, which comes right after subsection 1.

Mr. Allen: Yes.

Mr. Chairman: Is everyone clear on that?

Mr. Carrothers: A new subsection 1a, not subsection 3?

Mr. Chairman: That is right.

Mr. Allen: It will be renumbered in sequence, in any case, in the legislation.

Mr. Chairman: We are getting advice from legislative counsel that it should read "adding a new subsection (3)," and that it should read "despite subsection (2)," as originally proposed. Does everyone have that clear? Mr. Allen is moving to amend section 2 by adding a new subsection 3, which reads, "Despite subsection (2), no person shall smoke in any hospital, health care facility, child care centre or school attended by minors."

Discussion, and then we will open it to other members of the committee.

Mr. Allen: Partly pursuant to some of the discussion we had around the issue of an exemption for an area primarily serving the public, I commented it might well appear that language could be used to also exempt substantial institutions that were workplaces for some people, but appeared also to be institutions for serving the the public primarily, on the other hand. Some of those institutions obviously were pretty critical ones in terms of public education and health care, both of which this whole matter bears so heavily upon.

In addition to that, I want to frame part of section 2 that would make it quite clear that before we go on to the designation section, whereby



smoking areas are designated, there are some workplaces where the issue is particularly critical in terms of education, role modelling and the direct health question itself.

In those instances, it seemed to me there was a very strong case for stating that there should in any case be no exemptions whatsoever with respect to the main principle under subsection 2(1), "No person shall smoke in an enclosed workplace," with respect to these particular workplaces, so I framed this subsection to read as it does, making it quite plain and unequivocal that no person under any circumstances shall smoke in these particular institutions.

I think it was made plain in our testimony that it is absolutely critical in terms of developing attitudes towards smoking and the perils thereof that in places like child care centres and schools attended by minors in particular, the whole role modelling issue is critical. It is also very contradictory for those institutions to be teaching children about their proper health and about their care and concern for themselves and their fellows, and then at the same time for practitioners, workers in those facilities to be seen to be smoking.

Likewise, the contradiction is even more patent in the case of hospitals or health care facilities, and therefore it seemed to me that to put all those together in a single subsection was very appropriate, and I have so moved.

Mrs. Sullivan: I think it is clear that with the thrust of the act, which is, "No person shall smoke in an enclosed workplace," we are already one further step down the road in conjunction with many institutions that have not already determined not to allow smoking.

The Ministry of Labour, through this bill, has clear responsibility in terms of the workplace areas. It is my feeling that the boards of education and the institutions themselves if they are health care institutions or child care centres, have responsibility in terms of the public areas, which are removed from the act.

Having seen what has occurred with school boards and other health care institutions, I sense that a board would at its peril designate 25 per cent of the workplace as a smoking area, and indeed I suspect that most of the school boards and other health care institutions will follow the rule, "No person shall smoke in an enclosed workplace," as a matter of course.

If there is any change to that, we feel it ought to be considered at the school board or Ministry of Education level, or in the Ministry of Health or in the local health organization fields. We believe the minimum requirements of the act do apply to these places.

Mr. Chairman: Mr. Carrothers and then Mr. Sterling.

Mr. Carrothers: I really think the points I wanted to make have been made, so for the sake of brevity—

1530

Mr. Sterling: During the hearings, we heard two very cogent reasons to support an amendment like this. Members of the committee will have another amendment already in front of them that I have placed for section 3, which essentially does at least part of what Mr. Allen is attempting to do here.

The two reasons are related, number one, to the role model that is presented to our young people while they are in their formative years as to what they should be doing in the future with their own lives. The second and I think very important area is that if we do nothing else, we will protect in day care centres, nursery schools and elementary schools in particular, our children who do not have the same ability to assimilate secondhand smoke as we do as adults. That has been shown and proved time after time. Notwithstanding that it may be of some discomfort to the staff, I think you have to put the kids first in those cases where they do not have the ability to deal with the chemicals that are produced by secondhand smoke.

Lastly, with regard to the argument that school boards can handle this issue on their own, I would only say that there is probably no more divisive an issue in a lot of our schools at this particular time. If in fact the provincial government takes leadership and says: "That is it. That is the way it is going to be," then that divisiveness will go. That would be the rule and it would be over.

I suggest to you that if you have talked to any of your friends who are at the trustee level or in the teaching profession, it is a very divisive issue. It is very hard for them to say to the janitor or whoever it is that you cannot smoke because you are setting a bad example for the students. It is very, very difficult to enforce that kind of thing when you have to confront it in a labour relations point of view. Therefore, I would accept what we heard in evidence in front of us that something harder is needed for these particular places.

With regard to hospital and health care facilities, I found in dealing with Bill 71 when we had public hearings that it was perhaps a more difficult and complicated issue in dealing with that particular matter than I could address in that bill. We attempted to deal with that in Bill 71 with a different kind of approach. How we dealt with it in that particular bill was that we said anybody going into a health care facility would have a right to a smoke-free environment, and therefore gave flexibility within the health care institution to provide both. Notwithstanding that, I would support Mr. Allen's amendment, but you will find in my amendment to section 3 that I did not deal with the health care facility because of those special problems.

Mr. Daigeler: I think the discussion obviously indicates the different perspectives from which we are coming. I think Mr. Sterling quite clearly said that we as a province should say, "That is it and everybody else has to fall in line."

While that is one perspective, I think the approach of this bill, and I think it is a reasonable one, is to say that as much as possible we want to work with employees and we want them to sit down and work things out, rather than make an apodictic statement, "Here it is and that is it." I think this bill and the intention of the government here is to say: "Listen, this is a very important issue. The direction of the government is no smoking. How can we work towards that?"

Mr. Allen: To say that this bill fosters discussion with the employees is a pretty strange kind of comment. Where do you find that in the legislation? It is only where there are existing health and safety committees or a health and safety representative that there is some reference to consultation. The bill otherwise makes no reference to consulting with anybody and it needs to do so.

Coming back to the point that the parliamentary assistant was making that no school board would designate 25 per cent of a school as a designated smoking area, that is patently obvious, but, quite frankly, I am hopeful that this committee will take a much more sensible approach to the question of designated smoking areas and it is entirely possible that school boards would permit the designation of enclosed, separately ventilated smoking areas in schools or that a child care centre might allow that. Quite frankly, I think to do so is contradictory to the whole intent and purpose of this legislation both as a health matter and as an educational matter.

It was in the hope, in particular, that we would be doing something somewhat more advanced with respect to what a designated smoking area was that I wanted to see this section included, which would provide no out for those institutions to even provide designated smoking areas of that kind in those institutions.

As Mr. Sterling says, and as much of the testimony that we have received from those who have been involved in implementing complete smoking bans in workplaces, the critical thing is to have a clear, hard-and-fast rule in order to eliminate the kind of conflict that Mr. Daigeler would like to avoid in implementing this kind of legislation.

This is the kind of clear, unequivocal rule with respect to those institutions which is probably most likely to cut through those problems and to resolve the issues, once and for all, in them.

I stay with the amendment and I hope the members of the committee will support it because I think it is very critical that those institutions in fact are quite clearly and unequivocally smoke-free.

Mr. Chairman: I assume that concluded your comments and we are ready for the question.

Mr. Sterling: Can I have a recorded vote on this one?

Mr. Chairman: A recorded vote has been requested. The clerk will call the roll.

The committee divided on Mr. Allen's motion which was negated on the following vote:

Ayes

Allen, Sterling.

Nays

Carrothers, Daigeler, Kanter, Kozyra, Miller, Owen.

Ayes 2; nays 6.

Mr. Chairman: Mr. Sterling indicated a further amendment to section 2.

Mr. Sterling: Under section 3 on the advice of our eminent legislative counsel, I would move—

Interjection.

Mr. Sterling: Legislative counsel has advised me that it would be more appropriate that I move this amendment under section 2. If you look through your section 3 amendment that I have submitted—

Mr. Chairman: Mr. Sterling moves that section 2 be amended by adding thereto the following:

"Despite clauses 2(2)(b) and (c), an employer may prohibit smoking in all areas of the workplace."

1540

Mr. Sterling: I am not certain about the advice I received from legislative counsel, and I am quite willing to share this with the committee, that employers probably have that right anyway, but I was alarmed yesterday by the evidence that we received from a number of people who were before this committee where somehow there has been the impression left that this is a smokers' rights bill because there is provision in the bill whereby an employer can in fact—and I know the word is "may" in section 3—designate up to 25 per cent of his workplace as a designated smoking area or areas.

I am concerned that the impression not be left with the public that an employer is limited in banning smoking totally from his work premises. Therefore, I think this subsection would add clarity to the existing law and make it clear that when somebody would read the law they would in fact understand what the situation is.

Further, I might add that there might be some argument that after this law is passed, with some validity, perhaps using the charter in terms of discrimination and an argument against an employer if you were a smoker, I think the act in fact brings a new right for a smoker or there could be a valid argument put forward before a court of law to say that.

Mr. Carrothers: I am wondering if that is not already there. I am a little concerned, and maybe legislative counsel could help out, but it would seem to me we have section 2, which in its first statement says you will not smoke in the areas that it sets out. We then have section 3, which is permissive, which says the employer may designate a place you can smoke. It seems very clear in there that the employer does not have to use that permissive section. In other words, they could not designate a smoking area, thereby leaving the workplace totally nonsmoking.

Knowing that our courts—and I have had some experience with this—have a tendency to say there must be a reason for a section and the words must be there for a purpose and will then try to find the reason for that purpose, I guess I am concerned that by saying something that, to my reading, is so clear in the bill anyway, we might be adding a confusion to the legislation that might end up defeating our purpose.

I wonder if legislative counsel could indicate if this would add anything or if this ability is already so clearly there that you might just be stating something twice.

Ms. Hopkins: I am sure I am going to be a little confusing in describing how this proposed subsection might work.

If the bill did not have a subsection 2(2) in it, then the prohibition would be complete and an employer would have to choose to designate a smoking



area in order for a smoking area to be possible. Subsection 2(2) operates to exempt certain places from the prohibition, and what this proposed amendment would do would be to say that an employer can in effect nullify the exemptions in clauses 2(2)(b) and (c). So it does have an effect on the structure of the bill.

Mr. Chairman: That clarifies it somewhat.

Mr. Daigeler: In other words, this particular amendment simply spells out in explicit words what is implied. Yes or no?

Mr. Chairman: I think it does more than that, as I understand it. Do you want try another go-around on the explanation?

Ms. Hopkins: This is tough, I think. I think the state of the law now is that an employer can say to his or her employees, "Look, smoking is prohibited in our workplace." What the proposed amendment does is spell that out in the context of this bill.

Mr. Daigeler: That is what I said, yes.

Mr. Kanter: Can I just pursue the explanation of it? Are you suggesting that it might be less than perfectly clear that the owner of some place that is used primarily by the public—like a restaurant or a tavern—can now ban smoking in the workplace? Would this amendment by Mr. Sterling make it very clear that he could ban smoking in his workplace even though it might be one used primarily by the public or for lodging? Is that the impact of it, or am I missing it?

Ms. Hopkins: No. I would say that in terms of the law, it is clear that the restaurant owner can prohibit smoking in the restaurant. In terms of this bill, a restaurant owner who is not a lawyer might not be aware that the restaurant owner can say, "No, there will be no smoking in the restaurant." What this does is kind of state what is not stated in the law.

Mr. Kanter: So it is implicit that the restaurant owner could do it, but this makes it explicit, makes it more clear to people who may not have the benefit of sitting through this committee.

Ms. Hopkins: Yes.

Mr. Kanter: Okay.

Mr. Carrothers: Could I just follow that up?

Mr. Chairman: Yes.

Mr. Carrothers: Would a court, as courts do, want to be very narrow with its interpretations? Do you think they might try to find some reason for putting in what was already there; find some unusual interpretation based on that? I guess I am hesitant. If the law does not stop it, I am a little uncomfortable repeating things, because I have seen bizarre interpretations come out as those who do not have the benefit of these committee reports, and the courts do not look to them, invent the most unusual explanation and then it becomes the interpretation and we are back amending the law. I guess I am concerned about unnecessary words going into legislation.

Ms. Hopkins: There is a risk that a court might read this as

something other than a reiteration of the common law. There is a risk that a court might think that it makes a change in the common law, yes. How much of a risk, I cannot help you with.

Mr. Chairman: Before we go to Mr. Miller, Mrs. Sullivan would like to bring the ministry perspective in on this.

Mrs. Sullivan: That is right. I would like to call on counsel from the ministry on this area.

Mr. Blair: Certainly. The thrust of the bill as drafted, of course, is to prohibit smoking in workplaces, subject to certain exceptions and subject to a smoking area being designated. One of the underlying assumptions behind this bill is the right of an employer to exercise control over his workplace. The assumption is that an employer already has the right that is spelled out in this amendment.

Certainly if there is a danger of a court relying on this in deciding that certain common-law rights that we thought existed do not exist—common law rights on an employer or of the owner of a property—that would seem to be at odds with the basic philosophy of this bill. The bill does not do anything to encourage smoking—or it was not intended to. It is restrictive of smoking and the bill was crafted to attempt to stay out of the way of other initiatives to restrict smoking.

Another way of dealing with these kinds of concerns are clauses that say, "Nothing in this act shall be taken to derogate from the right of an employer to restrict smoking in the workplace entirely," or something like that. That is another way of saying the same thing. That way, it does not purport to give an employer a right, yet assumes that the employer already has that right.

1550

Mr. Chairman: I am wondering if Mr. Sterling would be willing to entertain that suggestion.

Mr. Miller: May I get a clarification? Is this taking away freedom of choice for the individual?

Mr. Chairman: To whom are you directing the question?

Mr. Miller: To the researcher or the ministry. Does this take away freedom of choice?

Ms. Hopkins: No, what it does is emphasize that the employer has the choice to prohibit smoking completely.

Mr. Miller: What about the average citizen who may want to smoke?

Ms. Hopkins: In a workplace?

Mrs. Sullivan: Just going back, Mr. Sterling, I wonder first of all if there might be a different wording. My personal concern with this is that indeed this section may well fix in people's minds that the bill is a smoker's rights bill rather than a bill intended to decrease smoking in a workplace. I am concerned about that. My view is the intent of what you have included in this amendment is basically the intent of the bill, but I am afraid that by

putting this wording in the bill it will be seen to be the exact opposite of what it is intended to be. It is a reverse psychology.

Mr. Sterling: I followed you up to your conclusion, but I thought you were leading to a different answer.

Mrs. Sullivan: I am wondering if my problem is with the wording rather than with the intent.

Mr. Sterling: Did the legal adviser indicate in his remarks that he would prefer to see a section added to the end of the bill or at some other part of it and that it just state basically what you stated, that none of the sections in this bill will in any way derogate from the right of an employer to eliminate smoking in the workplace?

Mr. Chairman: The clerk is suggesting that would fit better as subsection 10(3). I am wondering whether legislative counsel has any comment on that.

Mr. Sterling: That is fine by me, if that is going to clarify it. I think there is a good argument that when you confine it to a section, you start intermixing it with other issues. I will withdraw that amendment at this time and reintroduce it in section 10.

Mr. Chairman: Section 10 is a more logical spot for this to be considered? Any further amendments to section 2?

Mr. Allen: Could I ask a question while we are into that discussion?

Mr. Chairman: Sure.

Mr. Allen: My presumption has been that the exemptions under subsection 2(2) mean that in the cases of clauses (b), (c) and (d) the whole question of designated smoking areas under section 3 does not apply, that in effect the rest of the bill does not apply with regard to areas primarily used for serving the public, lodging or a private dwelling, that these are outside the boundaries of the bill. Am I correct in that? Yes? Okay.

Mrs. Sullivan: I think perhaps with a new wording under section 10, Mr. Sterling's motion might be of use to us.

Mr. Chairman: Shall section 2, as amended, carry?

Mr. Allen: No, just a moment. Oh, I am sorry. You are back to section 2. Section 3 is where you had it originally.

Section 2, as amended, agreed to.

Section 3:

Mr. Chairman: Amendments to section 3? Any government amendments?

Mr. Kanter: Yes. There was some concern expressed that those specially designated smoking areas which are, in essence, an exception to the general rule of no smoking would somehow be moving or perambulating or move with the smokers or whatever. I do not think this was the intent of the law at all. This was not my experience. Mr. Johnston referred previously to my experience in the city of Toronto with nonsmoking bylaws. We did have a law

with respect to restaurants and it set aside certain areas for nonsmoking areas, and in my experience, they were fixed locations. I believe that is the clear intent of the government in this situation.

I have explored various ways of trying to fix more specifically the location, including the term "fixed areas," for example, and after some consultation with legislative counsel, I think substituting the word "location" for "area" makes it clearer that we are intending that, should an employer wish to designate an area, it is tied to a location and not a person. I think this would rule out any possibility that an employer might claim, as was suggested by some of the deputants appearing before us, that a smoking area would sort of move around wherever a smoking employee happens to be. I do not think that is the intent at all, and I believe this amendment makes the intent clearer that the smoking areas are to be in fixed locations.

Mr. Chairman: The amendment needs to be formally moved.

Mr. Kanter: Did I not? It should be read, then. I am sorry.

Mr. Chairman: Mr. Kanter moves that subsection 3(1) of the bill be amended by striking out "areas" in the first line and inserting in lieu thereof "locations."

Mr. Kanter: The explanation I have just given should have followed.

Mr. Chairman: Yes. We will deem it to have followed. Any further discussion on this amendment?

Mr. Allen: First, a question: Does that mean that in all other respects where "areas" is used in connection with designated smoking areas they are now to read "designated smoking locations"?

Mr. Kanter: No, I do not believe so. I think the idea is that an employer may designate one or more locations; it should be substituted there. In other parts of the bill the word "area" is, I believe, the correct one. Perhaps legislative counsel might want to comment on that for a little bit.

Mr. Chairman: Would you like to comment on why it is not necessary to change "areas" in all instances?

Ms. Hopkins: In effect, we label the locations we are designating as designated smoking areas. In legislative terms, the label refers to the location itself. We do not need to change the label in order to change the substance the label stands for.

Mr. Chairman: If I read it correctly, the amendment would change the wording of subsection 3(1) to, "An employer may designate one or more locations in an enclosed workplace as smoking areas."

Mr. Kanter: That is correct.

Mr. Chairman: Okay. Now I see why you do not need to change the rest of it. Further discussion? Ready for the vote on the amendment? All those in favour? Opposed?

Motion agreed to.

Mr. Chairman: Any further government amendments? Mr. Allen, your amendment?



Mr. Allen: Yes, I have an amendment to section 3 which I think is the critical amendment this bill needs in order to make it a useful precedent as legislation in this area.

Mr. Chairman: Could you make your comments after the motion has been moved, please?

Mr. Allen moves to amend section 3 by replacing subsection 2 with the following:

"(2) The area or areas designated in subsection 1 shall be physically separated from the air space of the enclosed workplace and shall be separately externally ventilated."

Mr. Chairman: Did you have any further comment?

Mr. Allen: Yes, I have. One after another of virtually all the groups that came before us in the two days of hearings we went through made it quite plain to us that unless some such definition of designated smoking area were provided, the bill in effect would not meet minimum health legislation standards; that it would cater almost exclusively to the status quo that exists in workplaces today; that it would eliminate most of the pressure this bill would otherwise pretend to exert upon employers to alter the smoking arrangements in any significant way within their workplaces.

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Testimony was given to make it quite plain that the introduction of smoke and the attendant pollutants at any significant point in the same air space under the same ventilation circumstances would lead to its diffusion equally throughout that entire space, and therefore would impact heavily, notwithstanding the designation of smoking areas as defined in this bill, upon the people whom this bill pretends to protect.

We were told time and time again that this part of the bill makes the rest of the bill meaningless, relatively unhelpful, and that it eliminates it from that category of significant precedent legislation for the rest of the country. One would hope this province would want to set a precedent by setting some landmark legislation in this area, not a minimum kind of legislation that is so low that it does not meet health standards, does not meet standards of logic with respect to the purpose of the bill, and in fact nullifies the main purpose of the bill per se.

The only way to accomplish the proper ends of this bill, according to most of the testimony, both from those who had experience in the devising and structuring of smoke-free workplaces and those who came with their health and educational concerns, was that there be separate smoking areas which are designated, clearly indicated, physically separated from the air space of the rest of the enclosed workplace, and separately and externally ventilated.

It has been pleaded that there is some cost attendant to that. Undoubtedly that is true, but at the same time we were also told in the testimony that there were significant savings for employers moving in any case in the direction of a smoke-free workplace of one style or the other, whether with designated smoking areas of this kind or another. One could expect benefits in terms of the long-term maintenance of those buildings, the upkeep of sensitive machinery, and the saving that is entailed with regard to increased attendance. There would be less absence from work for reasons of

illness, less need to call upon sickness and illness plans and whatever else the employer might contribute to. So there are a whole range of cost savings that have to be laid against the cost entailed in implementing this kind of separately structured and ventilated smoking area.

The arguments that have been normally applied as to why this would not be proper to lay upon the private employer in the province really do not hold. There seems to be no good reason why this legislation ought not to take the somewhat more rigorous, the obviously more healthful, and the certainly more logical approach that where smoke-free areas are created they be separate and totally enclosed apart from the air space of the workplace and that they be separately ventilated.

Mr. Chairman: Before I go to the next speaker, your chair has a question, perhaps to legislative counsel, either committee or ministry. I think there is an effect here that you may not want in terms of the way you have inserted this. As I understand your motion, you are substituting your subsection 3(2) for the one in the bill, and by doing that you are eliminating the 25 per cent cap on the smoking area.

In that case an employer could designate 95 per cent of the workplace as a smoking area, and if you have a whole factory or office that was externally ventilated you would destroy the intent of the bill. I am just seeking whether my reading of this is what would happen with the way this has been put forward, rather than adding it as another subsection to section 3 by putting it in here and deleting the 25 per cent. There is then no limit on how large the designated area could be. Am I interpreting that properly?

Ms. Hopkins: If we strike out subsection 3(2), then we strike out the 25 per cent limit. There is no limit on the area we can designate as a smoking area.

Mr. Chairman: Could you designate then 100 per cent of a workplace as a smoking area?

Ms. Hopkins: Yes.

Mr. Chairman: If the whole workplace was externally ventilated, then you are destroying the intent of the bill. I do not think that is what you intended to do.

Mr. Allen: That was not my intent. I guess I was coming at this in a somewhat reverse direction. In my own reflections, the 25 per cent was not really significant unless it was enclosed. Then I abandoned the 25 per cent, because I was treating it in terms of an ineffective allocation of space in so far as the diffusion of smoke was concerned in a very open designated area. I would reconsider that and make this an additional section, so that I would not be replacing subsection 2.

Mr. Chairman: It would be subsection 3(2a) then? Rather than replace subsection 2, you would be adding a new subsection 2a—

Mr. Allen: Adding a new section, which would be a new subsection 3 and then subsection 3 would become subsection 4.

Mr. Chairman: The clerk is saying subsection 2a and then they will renumber it later.

Mr. Allen: Yes.

Mr. Chairman: Okay. If it carries, we will consider that instead of replacing subsection 3(2), we are adding a subsection 3(2a). I had to bring that to your attention because if it went through as it was, it could have destroyed the main intent of the bill and I have to watch amendments in that regard.

Mr. Allen: Yes, quite.

Mr. Chairman: Further discussion?

Mr. Sterling: On that point, Mr. Chairman. I think you may have solved a small part of the problem, but I still think you have the problem. The problem is that with the amendment as worded, you could still have 25 per cent of the total area designated as a smoking area and that could be all of the office space in a manufacturing plant—

Mr. Chairman: That is another issue, which—

Mr. Allen: My phrasing on that I think clears that. I intended that it be physically separated from the air space of the enclosed workplace. In other words, the enclosed workplace where the work in fact takes place has a certain air space and this designated area has to be quite separate from that and externally ventilated and, therefore, it does not intrude on the actual working area inhabited by working people.

Mr. Carrothers: Thank you for making that point. I was going to draw that to Mr. Allen's attention as well.

I wanted to start by indicating that there will be another amendment coming up a little later dealing with the issue of physical separation. I just put that on the table, because there is an amendment which, in my view, anyway, is more appropriate at section 5 and we will be dealing with it there.

On the issue of ventilation—

Mr. Allen: You cannot say at this point what that is, because all it does is post signs, is that not right?

Mr. Carrothers: No, no.

Mr. Allen: What is it then?

Mr. Carrothers: It deals with the issue of physical separation.

Mr. Allen: Then I have not seen that.

Mr. Carrothers: On the question of ventilation, though, I guess that is an issue the committee has to rattle with. We have heard some talk on it, but I would like to point out that the very multiple-use buildings Mr. Sterling was speaking of earlier make it virtually impossible for many workplaces to comply. We have many square feet of office space in this city, as an example, which are designed to have internal division walls—demising walls is the nice legal term—put up and moved around at will.

The building is designed to be ventilated as a unit. These walls change year by year, month by month, week by week in some places. It would be

impossible to deal with the question of external ventilation for the designated work space. I think it is much better to deal with that issue and the question of overall air quality in the office, because that is what you are talking about anyway. We do have standards and perhaps they need to be looked at again, but you have the issue of what is the overall air quality in the building. There are many other contaminants in that air, as we are hearing, than just cigarette smoke.

I think we are much better off dealing with this issue of the secondhand smoke within the whole work space as a question of overall air quality. You would get a much more effective regulation of that, but to put in a section like this would make it virtually impossible for office rental space, as an example, and I think there are many others, to work as it works in our city, where you get 500 feet with an option on another 700 feet and then move the wall. You cannot put individual ventilation spaces in those buildings. I think to require it in the law is a very clumsy tool. To make that so specific would be virtually impossible for most people to comply with.

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Mrs. Sullivan: I want to add to the comments that have been made by Mr. Carrothers relating to the kinds of workplaces the province will be covering under this act.

Once again, I want to remind you that the norm in the bill is no smoking. There are 233,000 workplaces in the province that the province regulates under labour legislation. They vary from the large, sophisticated, highly technological pharmaceutical plant or chemical operation to a very tiny machine shop operation or perhaps a one-employee office.

An arbitrary standard that would be applicable to all buildings in any location in the province with the broad geography and the various and extremely varied workplace situations where people are located as they are working would be extremely restrictive.

One of the other areas I think it is important to remember, too, is that as a first step in restricting smoking in the workplace, this is a singular legislation. We have seen from the positive response to similar bylaws at the municipal level and in the private sector that what happens after the first step is that there is a voluntary movement further down the road.

We feel that in fairness to all of our employers in the various kinds and structures of workplaces through the province, the approach we are taking is reasonable, fair and flexible. With the input of individual employees, and I know Mr. Allen has an amendment on that particular section of the bill, an accommodation will be made and indeed we will be seeing more and more workplaces moving directly to the central thrust of the bill, which is no smoking in the workplace.

In the meantime, we feel that the example and the principle behind the bill is a significant step forward, not only for Ontario but for the entire country.

Mr. Daigeler: I think Mr. Allen is quite correct. This is obviously a very important matter he has raised, and the subject has been discussed repeatedly over the hearing session. I think the main argument Mr. Allen is making, which has been made before, is that if there is no ventilation, then the bill is of no use. I disagree with that argument. I indicated that



yesterday. I think the main benefit, and a very significant benefit of this bill, is that it will encourage—and I think experience has shown it—people to stop smoking and it will encourage those who continue to smoke to smoke less. Through that reduction, both in the number of smokers and in the number of cigarettes or cigars smoked by smokers, I think it will benefit, first, the individuals themselves who used to smoke or who continue to smoke and, second, those who do not smoke at all.

I think the bill continues to be very valid, even if we do not prescribe in law at this point outside ventilation for every smoking area. Obviously, it is something that is in development still, and we have had representation in writing from some other groups that point to the tremendous implications of this kind of requirement. I think what is being proposed here is a very reasonable approach and sets a direction for the rest of the country by saying no smoking is the rule. I think many people will take that as a sign and as an encouragement to quit and at least to smoke less.

Mr. Sterling: I am having a very difficult time biting my lip as I listen to some of the crap that is going on this legislative committee room. I have never heard such unadulterated garbage in my life.

I have dealt with this issue for over three years. I have read all kinds of different legislation. I have worked with health associations across this province who know this stuff backwards, forwards and sideways. They know what is happening out in our community. I have never heard such garbage from the government in my life.

If Mr. Allen's amendment is not accepted by this committee, or a like amendment, then this bill is a joke. It does nothing. The policy adviser for the Minister of Labour (Mr. Sorbara) on Monday said that this bill brings no new right for the nonsmoker in the workplace. That is exactly what we have in Bill 194. We have nothing.

In fact, what we have is an encouragement for future Labour ministers who do not have the guts to deal with the issue, as this one does not seem to have the guts to deal with this particular issue. We have encouraged them to shove it further under the rug because there will be an illusion that they will be able to stand in a public forum, in a political forum, and say, "We dealt with smoking in the workplace."

Mr. Miller: Before the television.

Mr. Sterling: "We did that. We dealt with that." Nothing would make me more angry than to see the continued mismanagement of this issue by this government.

I thought when we entered into Bill 194 that we would have an opportunity to really deal with the issue. To compare this law to what the city of Toronto has done, what the city of Markham is doing, what the city of Etobicoke may do or might have done—I am not aware of it—is like comparing the city of Toronto to the village of Manotick in terms of size.

The city of Toronto has decided that if you are a nonsmoker and you work in a workplace, you do have a right to a clean environment. The municipal politicians of the city of Toronto have stood up and said, "We are going to take this issue and act for the workers in the city of Toronto."

What these people who have been before the committee, what Mr. Allen's

party and what my party stand for is a right for every other worker in Ontario to have an equal right to what the workers in the city of Toronto have. For these people to say that things are going to change because of this is a joke. The fact of the matter is that most progressive employers are light years ahead of this government in terms of what they are doing in their own particular work environment. I say not only employers, but also most unions. They want to see their workers living in a healthy environment.

In spite of the fact that society is moving that way and has moved that way, we are dragging our feet, we are saying in essence in this legislation, "Mr. Worker, you can have a desk here which is nonsmoking." The legislation says nothing about the fact that the very worker sitting next to you no more than three feet away can be a smoker and the guy on the other side or the girl in front of you can also be a smoker.

The fact of the matter is that you can be polluted with smoke in the workplace under Bill 194 just by drawing a line around your desk as the Canadian manufacturers and the tobacco manufacturers have suggested in a pamphlet to employers across this province on how to evade Bill 194.

Your answer is in section 5 of this bill, which says, "An employer shall make every reasonable effort to accommodate employees who request that they work in a place separate from the designated smoking area." That is not worth the paper it is written on. It gives the employee no right. The employee has no right to a clean environment under this bill. The fact of the matter is, you have to face the music. When push comes to shove, you have to give the nonsmoker the right to a clean environment and, however you say it in the words, it has to come down to that.

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If this government is not willing to support an amendment put forward by my friend Mr. Allen, or other amendments, then we have nothing. We have worse than nothing, because we have shown the people of Ontario that not only are we 5 or 10 years behind where they are in society, but we do not even have the guts to protect the children in our day care centres. We do not have the guts to tell the day care workers and nursery school workers that they cannot smoke in those buildings, because it may harm the children who are there. We do not have the guts to do that.

That is amazing, that we do not even have the guts to go that little bit of a way, to take the lead and say, "Mr. Employer, Mr. Employee, your rights are secondary to those of the kids who are in that school." And God damn it, Mr. Chairman—pardon my language—but I do not care about the employer in the day care centre and I do not care about the teachers. I think that their lives and their right to smoke is secondary to the rights of the kids who are in those day care centres and in those nursery schools. I am ashamed that the government of Ontario is light-years behind with regard to protecting the children in those particular environments.

As I say, I have put a good part of the last three years of my life into this particular legislation. I have heard just about every fact and every argument. I have heard the bull that has come from the tobacco industry, with regard to their saying today that secondhand smoke has no effect on people, that it has not been proven. Well, that is what they were saying 20 years ago about firsthand smoke, and the evidence is mounting and mounting and we are seeing thousands of people in Ontario die, because we will not encourage them to get off this addictive behaviour.

I had hoped I would not have to give a speech like this, but I did not think we would be pushed to doing that. If in fact the government wants to take this particular route, wants to have a piece of useless garbage around, then so be it. But I will tell you this: they are going to have one hell of a time passing it on third reading in this Legislature.

You are going to see at least one member of this Legislature do everything he can to prevent Bill 194 from becoming law, so that the people of Ontario will not be tricked into thinking that they have some kind of protection in the workplace. It is a disgrace. I could not support Mr. Allen more with regard to this particular amendment.

Mr. Chairman: Further discussion? Mr. Allen, it is your amendment. Would you like to sum up?

Mr. Allen: I would just want to remind the committee that people who have examined this issue very, very carefully and deeply and have read the research and have very substantial hands-on experience with the issue, have come before us and told us that without this amendment, or something very, very close to it, which separates the designated workplace physically and in terms of ventilation from the rest of the workplace, this bill does not even meet minimum health legislation standards.

I pause to let that sink in. It does not meet minimum health legislation standards, with respect to an air pollutant which is present in virtually all workplaces and contains carcinogens which are far more potent and powerful than anything else that we are dealing with in the whole lexicon of health and safety matters. Yet we are cavilling over whether employers who own and operate structures, which these days are not only internally flexible but are built with walls and structures in such a way as to be externally flexible also and where you can in fact devise and put in place externally ventilated locations—yet this government is not prepared to move toward minimum health legislation in that area. I find that astonishing. I just find it astonishing.

I know we have not taken a vote and I am waiting to be surprised. I must say I echo Mr. Sterling's words, word for word. I just cannot comprehend a piece of legislation on this issue that does not clearly designate physically separated smoking areas for employees who need that facility or feel that they need it in a workplace.

I certainly cannot comprehend the legislation as it stands as doing anything. It simply says to an employer: "Go ahead and lay out 25 per cent of that. Put some signs up. Do what you can, of course, to move an employee from an area where he might be next door to somebody who smokes." We have seen how absurd that is. We have been told that the diffusion process takes care of it, but the employee is sooner or later going to get that sidestream smoke. It is going to be there and the health impacts are going to be there for him.

It is in that respect that the legislation becomes a tool in the hands of employers who want it to be so, and those are the ones that we have to legislate for. You do not have to legislate for the progressive employer who is going to step in and create a smoke-free environment. You do not have to worry about the one who is motivated enough to create for the employees separate, segregated smokeplaces.

You do have to be concerned with the employer who is not going to do that. The employer who is not going to be moved can simply take advantage of this legislation, turn it in effect into a smokers' rights piece of legislation and totally nullify the purposes of the government in the process.



As I say, I do not understand it. I hope government members are going to vote for this amendment but I have my suspicion from what I have been hearing and seeing today that that is not going to happen. I am dreadfully sorry.

Mr. Chairman: Normally I allow the mover of the amendment to sum up and I have not seen any further hands. Is there any objection to allowing Mr. Carrothers's comments?

Mr. Allen: I am always prepared for debate.

Mr. Carrothers: I did want to add a few thoughts because I think we all have the same objective here which is the quality of air for the nonsmokers in the workplace. What we may be quibbling over is how we get there, and I think you may not be quite realizing the practicalities of this external ventilation which I think is the point we are talking about.

This issue is the quality of air in that general workplace. Take as an example, the Toronto-Dominion Centre, because that is the very type of workplace I am talking about. The issue is the quality of air in that building, which comes down to the quality of the ventilation system put in because it is all done as one system.

There are hundreds, if not thousands, of individual workplaces in that building, with individual employers and individual employees all demised off and set up in little cubicles, and they change all the time. There are permanent work crews in that building changing demising walls. The ventilation of that building is not flexible. It is designed as a single unit. You cannot externally ventilate part of that building without destroying the entire ability of that building to ventilate itself.

I think we can obtain the objective that we all want by dealing with the quality of air in the whole building and the quality of the ventilation system. You cannot put an external ventilation system; the building has a negative vacuum. You cannot even open windows in a building like that the way it works. It is just the simple engineering of that kind of workplace.

I just come back to the point I made. Let's look at the quality of air, because there are many other contaminants in those workplaces that we should be looking at as well. If we go back to the quality of air, we can deal with the issue there. To require external ventilation is simply an impossible engineering feat for that building to accomplish. You would be placing a requirement on all those individual employers, or the landlord or whoever, that they could not meet, and you would not accomplishing what you want.

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Mr. Allen: Conceding that that is the case, then it is quite clear that the employer would not be able to comply with this particular part of the bill and he would have to go with subsection 2(1) and stay with it, which is designating a completely smoke-free workplace.

We were told by Mr. Repace yesterday, and by others who talked about the ventilation question, that notwithstanding that there are pollutants, the scale of ventilation that you are talking about to make the workplace safe in any understandable language with respect to the pollutants that are conveyed through smoking into a ventilation system is literally impossible unless you do external ventilation. But the choice is there.

If an employer cannot provide those standards because he cannot



externally ventilate because it is impossible in that building to do so, there is only one choice and that is that you have to stay with subsection 2(1), "No person shall smoke in an enclosed workplace," as the evidence that we have is that no ventilation system can handle it, period.

Mr. Carrothers: Let me just make one personal observation.

Mr. Allen: I do not know what the response can be to that. That seems to be the clear, hard scientific evidence, and we have to grapple with that surely as the basic fundamental premise of the whole argument.

Mr. Carrothers: Let me just conclude this with one personal observation as someone who is allergic to cigarette smoke. I have been in a workplace in one of these enclosed buildings that went nonsmoking with a portion designated. I found that when you dealt with the question of proximity and you put the work of the smokers off into that designated area, that notwithstanding that there was not external ventilation, any difficulties I had disappeared because the ventilation of the system in the building was able to take care of it.

That is just a personal observation of what happened to me. I just throw that out for --

Mr. Allen: But not the health and safety standards that are recognized as required for some of the pollutants that we are talking about. The problems faced are objective. That is very subjective. It is not scientific.

Mr. Carrothers: I am just saying that is what happened. Any difficulties I had disappeared with it and problems that were in the workplace were solved.

Mr. Chairman: Seeing no further hands, Mr. Allen, as the mover, a final word from you, if you wish.

Mr. Allen: I think the argument has been put.

Mr. Chairman: Are you ready for the amendment?

Mr. Allen moves to amend section 3 by adding the following subsection:

"(2a) The area or areas designated in subsection (1) shall be physically separated from the airspace of the rest of the enclosed workplace and shall be separately externally ventilated."

All those in favour of the amendment? All those opposed?

Motion negatived.

Mr. Chairman: Are there further amendments?

Mr. Sterling: What time are we sitting until, Mr. Chairman?

Mr. Chairman: We normally sit from two o'clock to five o'clock. It is 4:30 now.

Mr. Kanter: I thought until six o'clock.

Mr. Sterling: No, I am not aware of that. I thought it was until 4:30, to tell you the truth, but maybe the clerk can tell us.

Mr. Kanter: I assumed that we met, certainly when the House is in session, until the adjournment hour of the House. I am not a regular member of this committee, but that was the norm on the standing committee on administration of justice that I have sat on from time to time.

Mr. Chairman: I know that this committee has followed that when the House is in session, but during the hearings that we have been holding previous to these, we had adjourned at 5 p.m. The committee has not discussed that, and I am in the hands of the committee. Mr. Sterling has raised the question. We can set our own adjournment. We are scheduled to meet, as you know, tomorrow morning at 10 a.m. My hope was that we could finish the clause-by-clause today; but if not—

Mr. Carrothers: Did Mr. Sterling have any—

Mr. Sterling: I am not going to be finished by 5 p.m. I mean, I do not think I am going to be finished by 6 p.m. So it does not matter really. I would prefer to just sit till five and come back at it tomorrow morning. I do not think we are even going to finish tomorrow, Mr. Chairman. I am not willing to give up that easily.

Mr. Kanter: Mr. Chairman, could I just ask what is scheduled tomorrow? Are we having a morning and afternoon session, or what is the committee's practice for tomorrow?

Mr. Chairman: We have the authority of the House to sit all five days this week. If the committee decides to go into the afternoon tomorrow, it could make that decision. We had initially thought, when the subcommittee met, just to give some general direction, that Thursday afternoon and, if necessary, Friday morning should handle clause-by-clause. Mr. Sterling has served notice of his intention. Is there consensus to carry on at least until 5 p.m.?

Mr. Carrothers: I think we should carry on till 6 p.m.

Mr. Allen: I would prefer to carry on to 6 p.m. I must say I had planned to be leaving the province shortly after noon tomorrow on the expectation I would sit all evening, in point of fact, dealing with these amendments. But I do have some problems with tomorrow afternoon.

Mr. Chairman: We have limited time and we are using some of that time discussing what to do, so perhaps we should just get on with it.

Mr. Allen: Sure.

Mr. Chairman: Mr. Allen, you have further amendments to subsection 3.

Mr. Allen: Yes, I have an additional amendment to subsection 3.

Mr. Chairman: Mr. Allen moves to amend subsection 3 by adding the following words after "consult with," namely, "the employees and with."

Mr. Allen: I might then read this subsection:

"An employer shall consult with the employees and with the joint health and safety committee or the health and safety representative, if any, at the workplace before establishing a designated smoking area."

Mr. Chairman: That is moved.

Mr. Allen: Yes, and I have some discussion on it. I wanted to reflect in that the note that was struck so often in some of the testimony that very often in workplaces it is possible to move on these issues if you are consulting well and if you are bringing your workplace along with you.

The whole question of the smooth transition in these workplaces would in fact be assisted if there was at some point in this legislation a reference to consulting with the employees directly about imminent changes and, particularly in this case, about the establishing of designated smoking areas and how they would be implemented and what understandings would exist around them, and so on.

Mr. Owen: I am curious. If we have this situation, Mr. Allen, where the wording is "an employer shall consult," what happens if there is a situation where the employer wanted to have no smoking in the workplace and he consulted with the workers, and they in their wisdom felt that they should be having their 25 per cent area for smoking? I think that by your making it compulsory, you might be getting the exact opposite result to the one you are seeking.

Mr. Chairman: However, I am trying to understand the intent here. If you read it in the context of the clause, it is "before establishing a designated smoking area."

Mr. Owen: But it does not necessarily say that it is only if the employer wants a designated area that he must consult. It does not say that. We might be in a situation where the employer has to consult if we follow this.

1640

Mr. Allen: What the employer is asked to do under this clause is do some consulting. The consulting is taking place around smoking policies in the workplace in the context of a bill whose objective is that no person shall smoke in an enclosed workplace. It has to take place before there is the establishment of any designated smoking area to provide some relief for those who do smoke and who want to continue smoking in some fashion while at work.

First of all, not all places of employment will have joint health and safety committees or health and safety representatives, at least at this stage. They may shortly. In any case, this is of such wide impact in the workforce that it seems to me to be sensible, especially given the advice that we were given by some of the presenters who have gone through the exercise of trying to develop smoking policies in workplaces to undertake that kind of consultation. It apparently smoothes the way and makes it easier, according to all the experiences we were told about.

Mr. Owen: I appreciate what you are saying, the direction you wanted to take and the reasons for it, but I am just suggesting that I think you might end up with a result contrary to the one you are seeking.

Mrs. Sullivan: I believe that Mr. Allen's intent relating to consultation is an important one and clearly, in the private sector experiences and indeed in the public sector experiences that I am familiar with, the consultative process has been very important.

I believe, however, that if you flip the page to subsection 3(4), the words that you have added are indeed redundant. If we look at the definition of "joint health and safety committee," it can be "a joint health and safety



committee established under section 8 of the Occupational Health and Safety Act or a similar committee or arrangement, program or system in which employees participate." So I think there is a measure in the bill to cover the consultative situation and, indeed, that prescribes it.

Mr. Allen: Perhaps legal counsel of the ministry can remind me of what the minimum size of a workplace is currently in which an occupational health and safety committee must be established.

Mr. Blair: If you could just give me a moment, I will make sure I am right before I say anything.

Under Bill 208, I understand, it was down to five employees for a health and safety committee. Unless I am mistaken, it is currently at 20. There is not a joint health and safety committee in every workplace, nor will there be, assuming Bill 208 is passed.

Mrs. Sullivan: But there is a health and safety representative in the smaller workplaces that are not required to have a joint health and safety committee.

Mr. Allen: Even in one as small as five?

Mrs. Sullivan: Five is the low limit.

Mr. Chairman: Are you leaving your amendment stand?

Mr. Allen: I will leave the amendment stand and we can vote on it. It seems to me that in the general terms of that, there is nothing contradictory between what I have been suggesting and what the rest of the subsection provides.

Mr. Chairman: Mr. Sterling was out, so I will read the amendment before you.

Mr. Allen moves to amend subsection 3 by adding the following words after "consult with," namely, "the employees and with."

All those in favour of that amendment? Opposed?

Motion negatived.

Mr. Chairman: Mr. Allen has another amendment.

Mr. Allen moves to amend section 3 by adding a new subsection:

"(3a) Any smoking area designated under this section may be deemed transitional to a completely smoke-free workplace."

Mr. Allen: I had originally proposed this in the context of my sense of a designated smoking area, namely, a separately enclosed, separately ventilated area. I wanted to underline the fact that even that kind of development under this legislation should be considered or might be considered to be a transitional phenomenon towards the larger and longer-range objectives of the bill, which is that no person shall smoke in an enclosed workplace.

As that has not passed, it may be even more useful to include something of this sense with respect to the much less defined sense of a designated



working area that remains in the bill, and to underscore the fact, in much the same way I guess as Mr. Sterling was originally attempting to do under section 2, of what the ultimate purposes of this legislation happen to be.

Mrs. Sullivan: I think when we have the wording clarified for Mr. Sterling in regard to the addition to section 10, that wording will cover the precise situation you are talking about. We are going to be prepared to look at that wording. My view is that this would be covered.

Mr. Allen: I am happy to leave it in that status.

Mr. Chairman: You have withdrawn the amendment?

Mr. Allen: I am standing it down for inclusion in a later discussion.

Mr. Chairman: Someone has drawn to my attention that I should be calling for a vote on each subsection of each section as we go.

Mr. Sterling: I have amendments to all the subsections in section 3.

Mr. Chairman: Are there any amendments to subsection 3(1)? I do not see any amendments before me for subsection 1.

Mr. Allen: I think Mr. Sterling did have a motion that he was going to move which was originally intended for section 1 which was similar to mine about the designated smoking area, which is going to come into section 3.

Mr. Sterling: I am adding to section 3, whichever you put them in, subsection (1a) or whatever. Really, both of my amendments fit more neatly after subsection 3(1). I do not care, whichever way you want to deal with them.

Mr. Chairman: You are moving it as part of subsection 1 then?

Mr. Sterling: I have two amendments. This was originally under section 1 but on the advice of legislative counsel, I put it under section 3. Do you want me to read the motion so you know what it is?

Mr. Chairman: You are numbering this subsection 1a, are you?

Mr. Sterling: It does not really matter. It will follow.

Mr. Chairman: Mr. Sterling moves that section 3 of the bill be amended by adding thereto the following subsection:

"(1a) A designated smoking area shall be an enclosed area set aside for smokers to use tobacco which is clearly identified as such, does not include an area normally occupied by nonsmokers, and is independently ventilated to the out-of-doors."

1650

Mr. Carrothers: Would that be in order, Mr. Chairman, given some of the motions we have already dealt with this afternoon?

Mr. Chairman: I am going to allow it. Mr. Sterling.

Mr. Sterling: Under the present subsection 3(1), an employer is given the right to designate a number of areas in the workplace as smoking

areas. They thereby become designated smoking areas. He does that after consultation with his employees and whatever committees are available in his workplace to put that together.

The problem, of course, in this particular act as it now stands is that the employer is given the final say as to what should or should not be designated as a smoking area. In the scenario which I played and talked about before, there is every possibility, even with the government amendments put forward, that a nonsmoking employee would be forced to sit adjacent to or in the same room as any number of smokers, because the employer, after consultation, made the final decision that the designated smoking areas were in close proximity to the working space of that particular individual.

If you do not define in some way what a designated smoking area is and the absolute necessity (1) that it be separately and independently isolated from a nonsmoking area and (2) that it be an area that is not normally occupied by a nonsmoker, you give the nonsmoker no right to demand a clean environment in which to work. Therefore, as I have already said, you have, in effect, a bill which does nothing for the nonsmoker.

If the committee adopted this particular amendment, it would mean, first, that the employer could only designate a smoking area where in fact a smoker would be located; second, he would have to separate the smoking and nonsmoking areas; third, he would have to ventilate independently to the outdoors the smoking areas which he had designated.

I suggest, notwithstanding my colleague Mr. Allen's suggestion with regard to his amendment, that if this amendment were passed, it would not be necessary to have subsection 3(2) included in the bill. There would be no need to pick an arbitrary maximum figure of 25 per cent. In fact, if there were all smokers in a particular plant or workplace and they decided that they all wanted to smoke, you could have 100 per cent of the area as a smoking area. Therefore, accepting this particular amendment would allow a more flexible law in terms of meeting the different kinds of workplaces that we have across this province.

As you know, I am very, very much in favour of a situation whereby people would be encouraged not to smoke at work, not to smoke at home and not to smoke anywhere because of the very detrimental health effects that it has on our people. There is so much agony across our society in terms of the deaths it causes. Notwithstanding that, I recognize that there are different workplaces and different situations. Because this bill is structured in a poor manner, in this way, and because it does not deal with the key issue—and the key issue is you have to offer the nonsmoker some right to demand a nonsmoking area—then you are stuck with an arbitrary rule like 25 per cent and 75 per cent, which may be quite inappropriate for a number of situations in our province.

For instance, quite frankly, in a small business, if there are three or four individuals and they are all smokers, I do not understand why in fact you would have to designate any of that area as a nonsmoking area if they all accepted the fact that they wanted it that way. I do not understand why 75 per cent of it would have to be smoke-free. Under this particular amendment, we address the real problem, and that is that a nonsmoker would then have the right to go to work every day and work in a nonsmoking environment.

That is my amendment, Mr. Chairman.

Mr. Chairman: Thank you. Is there further discussion?

Mr. Daigeler: Essentially, I think we have the same kind of proposition that we discussed earlier. We discussed it with quite some passion, and I appreciated the points that Mr. Sterling made. Obviously, it is a subject that is very dear to his heart, and perhaps his passion is increased by the fact that he could not convince his own government to move in that direction.

However, I think the government feels, and rightfully so, that an incremental approach is the best one and that this legislation, as I said earlier, sets nonsmoking as a general standard. It provides an exception. I think it encourages people to drop smoking as a habit, and that is a very significant step forward. It does not meet the 100 per cent that I understand Mr. Sterling would like to achieve, but it remains that it is a very important forward move. Despite the fact that I am not in favour of this particular amendment, I think the bill is a very significant step in the direction of an improved working environment for the people of the province.

Mr. Chairman: Thank you. Is there any further discussion?

Mr. Allen: We entered all the arguments two or three times over in the previous round and, quite frankly, I was unpersuaded by the government arguments on this score.

As to the question of whether Mr. Sterling is aiming at a kind of 100 per cent ideal world, I thought he said just the opposite. He recognized that there are many different kinds of situations out there that need to be addressed and that a flexible but entirely separate and separately ventilated designated smoking area accommodated that world, in fact, a lot better than some other models we are hearing about. That is essentially the realistic thrust of this particular amendment.

One of the major problems with a straight edict approach, which would be "no person shall smoke in the enclosed workplace," and that would be, of course, a very ideal kind of thing to have happen, is that it would, at least on the face of it, leave one with no kinds of transitional means, no kinds of accommodation for people who may in fact have some claim to some consideration by virtue of their work history and their own personal circumstances as smokers.

This, at least, provides that and it also resolves the problem of the other workers in a way that the present legislation does not, by separating all smoking entirely from the airspace of the normally occupied workplace. So I continue to support this kind of amendment, and I support it in this form, as Mr. Sterling has given it to us in this latest round of this discussion.

1700

Mr. Chairman: I do not see any other hands. Mr. Sterling, would you like to conclude?

Mr. Sterling: Yes, I would like to conclude. Mr. Daigeler tempts me to give the same speech I gave about half an hour ago, because Mr. Daigeler continues to be under the misapprehension or misunderstanding that this bill is really going to do something.

I do not know where Mr. Daigeler was when we had 10 or 11 or 15



different health-associated groups who sat in front of us over the past two or three days. We asked them: "Do you want this compromise? Is this a compromise?" Their message to us was that this was a step backwards, not a step forwards. These are the people who have studied this legislation. They know of the disastrous health effects of firsthand and secondhand smoke.

They have the most to gain. They see the results more directly. They have to deal with the 11,000 lung cancer deaths a year. You and I do not have to face that every year. We do not have to face the families. We do not have to provide for the transportation of these people to the hospital. They are saying to us, "Don't do it, because this law goes backwards; it doesn't go forwards."

Notwithstanding the fact that these people who believe in it and have a greater stake in it than I do because they have to deal with it more directly every day and have to deal with the problems associated with the addiction to nicotine and the terrible effects it has on our bodies, say, "We don't want this," you continue to say that this is something good. I do not follow that at all.

Might I just reiterate again that your own Ministry of Labour says this does not give a nonsmoker one more right than he has now to say to his employer, "Stop this guy from smoking beside me at the next desk." It does not give him one right if that employer says: "Sorry, that is a smoking area. That's the way it is, buddy. You have to work there day after day. It does not matter if you have allergies. It does not matter if you have throat problems. It does not matter if your clothes stink every day because of this particular individual," even if that individual is an uncaring individual. Fortunately, most people are not that way and most employers are not going to follow this legislation. Most employers are going to do a lot more, as they have done in Toronto.

Anyway, Mr. Chairman, I will not use my energies to try to convince people who have been told what to do. You might as well call the vote. I would like this one recorded, please.

Mr. Chairman: Mr. Sterling has requested a recorded vote. Are you ready for the vote? Would the clerk call the vote.

The committee divided on Mr. Sterling's amendment to section 3, which was negatived on the following vote:

Ayes

Mr. Allen, Mr. Sterling.

Nays

Mr. Carrothers, Mr. Daigeler, Mr. Kanter, Mr. Kozyra, Mr. Miller.

Ayes 2; nays 5.

Mr. Chairman: Are there any further amendments to subsection 3(1)?

Mr. Sterling: Yes. I have another amendment. In that I heard considerable discussion by government members about the problem of independently ventilating out of doors, I would like to propose that section 3 of the bill be amended by adding thereto the following subsection: "A



designated smoking area shall be an enclosed area set aside for smokers to use tobacco, which is clearly identified as such, does not include an area normally occupied by nonsmokers"—

Mr. Chairman: Is that not what we just did?

Mr. Sterling: If you will wait until I have finished—"and meets such further criteria as are prescribed by the Lieutenant Governor in Council."

I have basically taken away "and is independently ventilated to the out-of-doors" with regard to my previous amendment and added "and meets such further criteria as are prescribed by the Lieutenant Governor in Council." Can I explain the amendment?

Mr. Chairman: Yes, proceed.

Mr. Sterling: My intention here is the concern of some members that to independently ventilate to the out-of-doors would be an undue burden on specific employers to be able to provide, that this kind of service would be too expensive. Therefore, I am offering the option of still providing the nonsmoker with some indicia of right by defining what a designated smoking area is, but leaving up to the cabinet the working out of the details which it might decide in the future would be reasonable for employers to live within.

Perhaps they might make the kind of rules which would provide that new buildings would have to deal with that particular situation and would grandfather existing buildings into a situation where they did not have to ventilate to the out-of-doors. This is clearly my second choice and not my first choice in dealing with this particular matter, but I think the option should be given to see if in fact this answers some of the objections of the government.

Mr. Chairman: Discussion on this amendment? No discussion?

Mr. Allen: I think I want to say what Mr. Sterling left implied when he said this was his second choice. Maybe it is sort of second, third or fourth; I think it is way down the line in terms of what he and I want to accomplish in this piece of legislation. The critical problem, of course, is that one is talking about a physically separate designated smoking area which none the less remains part of the existing ventilation system of existing buildings and therefore does imply that ultimately the pollutants that cannot be streamed out by the existing ventilation system will get to other nonsmokers, will become part of the common air that is breathed in the building and therefore will not meet the health requirements we had supposed this legislation was aiming at.

None the less, it might provide some greater degree of impediment in the movement of that smoke, might be of some help for some persons of low sensitivity, like Mr. Carrothers who described his situation in a closed-air building in a past incarnation. But for both of us this would be a very distant preferred choice as far as the options that we want out of this legislation are concerned.

Mr. Chairman: I have had some members ask for copies, and this amendment is identical to the last one we considered except for the fact that the words "and is independently ventilated to the out-of-doors" are not included and instead the words "and meets such further criteria as are prescribed by the Lieutenant Governor in Council" are substituted therefor.

Having said that, the clerk has gone to photocopy his handwritten copy of that.

1710

Mr. Carrothers: I suppose I will not enter into a debate at this point, on whether it is in order to be dealing so closely with the same subject in another motion and leave that. We could perhaps just serve notice if we are soon going to be finding ourselves in that; perhaps we should then get into a serious debate as to what is in order, but I will leave that aside for now.

I would like to respond and perhaps just reiterate what Mr. Daigeler said, that we are not moving to ban smoking. Many of us might think that is a good idea and that might be the ultimate solution to the problems that Mr. Sterling is talking about, but we are not doing that. We do not feel that is appropriate and I have not heard anybody suggest it. Mr. Sterling has not suggested it and his own bill did not go that far.

I think the minute we do not do that, we then leave ourselves in a position of finding a balance when we strike legislation. I have great trouble understanding Mr. Sterling's comments that somehow this bill moves us backwards. It may not move us as far ahead as some would like us to go, but it very clearly moves us down the road striking a balance, putting in place mechanisms, sending out a statement and perhaps a symbol to people and creating minimum standards, if I could use that phrase. I think many of us hope, in most cases those who are working in that workplace—let's remember that a workplace is a place of personal interaction; it works well when people get along together and, to some extent, problems such as these are best worked out within that workplace—so certainly from my perspective, I would hope that individual workplaces would work out situations much better than what we are putting as a minimum standard in this law.

But a law having to apply right across the board, and the law being a somewhat clumsy tool in dealing with social issues such as this, we struck a balance here which has moved us very far down the road. I cannot see any other appropriate way of dealing with this. I think that starting to get as restrictive as some of these motions that we are hearing are, just takes us into an area we do not want to necessarily get into. We would very much hope that this would happen, and I suspect in many workplaces it will. But we have to remember that we are setting a minimum here and we are setting something that will apply right across the board. What we are really debating, perhaps, is that balance, but we are left to find a balance when we do not move to ban smoking, and I do not think anybody considers that an appropriate way to go. So I find myself, for reasons I have just given and because of what we have done in past debates, unable to support this amendment.

Mrs. Sullivan: I am just trying to seek clarification on some of the kinds of problems that this amendment would mean in terms of work spaces and in terms of the different kinds of workplaces across the province. One of the things that it seems to me we end up with, as a result of this amendment, is not an amendment that relates to the workplace, but that is now providing a designated smoking lounge in each workplace. I have great reservations about that. I think that is not what we want to do through the bill and I am going to have to recommend that this amendment not proceed.

Mr. Owen: I was just trying to get clarification as to whether Mr. Sterling intended in the first line that the word "enclosed" be part of this or not. I was having difficulty with that word, and I gather Mrs. Sullivan has

difficulty with another word. But I did not know whether you meant at this point in time whether that word was included, and I gather you must have.

Mr. Sterling: My intent, in coming down to this lower common denominator, is to say that a designated smoking area will not be in the same room where nonsmokers are.

Mr. Owen: Which is what you were driving at with the Lieutenant Governor and the future of what the government could do by way of criteria down the road. But if you leave the word "enclosed" in at this present time, we are back to where we were earlier this afternoon.

Mr. Sterling: No, I do not agree. Basically all this amendment would require is that a designated smoking area is such that you cannot throw a nonsmoker in the same room as a smoker. I do not read it to say that it is creating smoking lounges, although it would be a possibility for an employer to have that kind of policy. What it says is that you cannot have a designated smoking area in the same room as another worker, which I think is reasonable as the very, very lowest common denominator. If the Lieutenant Governor in Council wants to say that in the future it would require separate ventilation for new buildings, it is up to the cabinet to make that regulation. This has nothing to do with banning smoking, as Mr. Carrothers has indicated.

Mr. Owen: No, no. I appreciate what you were driving at.

Mr. Chairman: Do you have further comments, Mr. Sterling?

Mr. Sterling has concluded his comments with respect to the amendment and we are ready for the question on it.

Mr. Allen: Could we have a recorded vote?

Mr. Chairman: A recorded vote on this one as well.

The committee divided on Mr. Sterling's motion, which was negatived on the following vote:

#### Ayes

Allen, Sterling.

#### Nays

Carrothers, Daigeler, Kanter, Miller, Owen.

Ayes 2; nays 5.

Mr. Chairman: Are there any further amendments to subsection 3(1)?

Mr. Sterling moves that section 3 be amended by adding thereto the following:

"Despite subsection 3(1), no employer shall designate a smoking area in a day care centre, nursery school, elementary or secondary school."

Mr. Sterling: On the advice of legislative counsel, I stroked out "or on a school bus" because of an earlier amendment which lost and is no longer relevant.

Mr. Carrothers: Do we have this in writing, Mr. Sterling?

Mr. Sterling: Yes. You have the majority of it. There are a few words that have been moved out.

Mr. Kanter: It is similar to a previous motion.

Mr. Carrothers: Could I have that wording again, please?

Mr. Chairman: What he has moved is that section 3 be amended by adding thereto the following—it is the one that is circulating, except it is worded slightly differently. Instead of "notwithstanding" it reads "Despite subsection 3(1), no employer shall designate a smoking area in a day care centre, nursery school, elementary or secondary school."

As chair, I am just getting advice from the clerk whether this is in order, because Mr. Sterling has removed the section relating to the school bus. This now makes it substantially the same as one we debated earlier. It may be similar. However, there are differences.

Mr. Carrothers: If I may make a comment to that: If we are going to be dealing with questions of order, then we should realize that the concept we are working with is substantially similar. I would submit, Mr. Chairman, that the intent of this motion is substantially, if not significantly, similar to a previous motion, and the committee has dealt with it. I would, with all due respect, suggest that just because the wording is not identical we have to look at the intent of the motion, and I would suggest that this is out of order.

Mr. Chairman: I take your suggestion under advisement. The previous amendment we dealt with indicated that no person shall smoke in a hospital, health care facility or child care centre attended by minors.

1720

Mr. Carrothers: Or school.

Mr. Chairman: This one, while it has a similar intent—

Mr. Carrothers: It deals with all but the hospital. I think the intent is virtually identical.

Mr. Chairman: —it has different components to it, and I am advised by the clerk that therefore it is in order. We can spend a lot of time debating whether or not it is in order.

Mr. Carrothers: We can, yes.

Mr. Chairman: I would suggest that we move on to consider it and vote on it.

Mr. Carrothers: Perhaps we should put the question, since I think we have already had the debate on it.

Mr. Chairman: Is there any further discussion on this amendment?

Mr. Sterling: There certainly is discussion on the amendment. As I indicated when we were debating Mr. Allen's section before, which included



health care facilities, etc., notwithstanding the fact I supported that particular amendment I felt there were some considerable difficulties in dealing with that when we dealt with a previous piece of legislation.

Therefore, I thought that in terms of the framework of the bill it would be, first, better placed in section 3, and second, that I would aim this primarily at the younger people in the community and therefore have included that an employer shall not designate a smoking area in areas basically where young children and young adults are living from day to day.

I have expressed before my concern about the ability of younger people to assimilate secondhand smoke; that their ability to do that is not equal to a full-grown adult, so the situation is more critical for them than it is for the adult population and therefore they need special protection.

Second, I have reiterated before that there was some concern by a number of groups that presented evidence that the proper role model be played and therefore that young people should not be exposed to their leaders, their teachers, etc., smoking at the educational institutions.

Mr. Allen: I just want to second this motion, although I know there is no formal necessity for that. I think of all the populations we are concerned with in this bill, that of children is absolutely critical from the health point of view, from the role-model point of view, from the point of view of the potential future of a smoke-free society, where the incredible health hazards that smoking presents may not be present. For us to sanction, even implicitly, the creation of smoking areas in those institutions in this legislation is something we should not do.

As for the arguments earlier that one can simply leave this to school board after school board or let it become part of the collective bargaining process, in which there may well be well-entrenched collective bargaining designations of smoking areas in schools, in day care centres and in nursery schools, I must say those prospects are somewhat unnerving to contemplate, because they will be much harder to get rid of later on than they are now. It would certainly resolve many problems for many boards and many collective bargaining circumstances in the future to simply cut through all that at this time and to pass this amendment of Mr. Sterling. I support it wholeheartedly.

Mr. Chairman: All those in favour of the amendment? Opposed?

Motion negatived.

Mr. Chairman: Are there any further amendments to subsection 3(1)?

Mr. Sterling: I have a further amendment. I refer you to my immediately previous amendment in order for you to follow it.

Mr. Chairman: Mr. Sterling moves that section 3 be amended by adding thereto the following subsection:

"Despite subsection 3(1), no employer shall designate a smoking area in a day care centre or a nursery school."

I would rule that amendment out of order.

Mr. Sterling: Why?

Mr. Chairman: It is substantially the same as the one we just voted on.

Mr. Sterling: No, it is not. We are not dealing with elementary or secondary schools. We are dealing with an entirely different body. Therefore, I do not know how I offer those two options to the committee other than by proposing it in two ways.

Mr. Chairman: The clerk advises me that the option to do what you now want to do was available when the previous amendment was before us, in that someone could have moved to delete "elementary or secondary school," and that we have in effect already voted on the option you now propose. Therefore, I will stay with my ruling.

Mr. Sterling: How would I have moved to delete if I was putting the motion?

Mr. Chairman: Any member of the committee could have if the committee had wished your now proposed result, so that could have been achieved.

Mr. Sterling: The ruling in effect then says that I, as a member of the committee, cannot put two options forward. Is that what you are telling me?

Mr. Chairman: I have made my ruling on the advice of the clerk. I suppose you can challenge the ruling. That is your right as a committee member.

Mr. Sterling: I challenge your ruling, Mr. Chairman.

Mr. Chairman: I will put this to a vote. Shall the chairman's ruling—

Mr. Sterling: I am going to need 20 minutes to round up my members.

Mr. Chairman: Recess for 20 minutes?

Mr. Carrothers: Can we establish that those 20 minutes expire at a quarter to six on that clock?

Mr. Chairman: Yes.

The committee recessed at 5:28 p.m.

1745

Mr. Chairman: Just before the committee recessed, the chair had ruled that the last amendment by Mr. Sterling was not in order, and the ruling was challenged. I now put the question: Shall the chair's ruling be sustained?

Opposed?

The ruling is upheld.

Are there any further amendments to subsection 3(1)?

Mr. Sterling: Mr Chairman, I would just like to indicate that members on the government side will have an opportunity to vote on the issue which was ruled out of order when this bill returns to the Legislature,

because it is my intention to put it back in committee of the whole House, which I am entitled to do under the rules.

I think they should know that while they were able to avoid putting voting on the record today on forbidding smoking in nurseries, schools and day care centres, the government will not be able to avoid that when it gets back to the Legislature and we go through all these amendments again, unless we have some kind of indication that the government is willing to deal with this matter in a serious vein. I just wanted to indicate that it is not the end of the road, by any means, in terms of the decision that you ruled out of order.

Mr. Chairman: Having seen no indication of further amendments to subsection 3(1), shall that subsection, as amended, carry?

Carried.

Section 3, as amended, agreed to.

Section 4:

Mr. Chairman: Mr. Kanter moves that section 4 of the bill be amended by adding thereto the following subsection, subsection 2:

"Idem

"(2) An employer shall post signs that identify designated smoking areas in a workplace."

1750

Mr. Kanter: In terms of speaking to that amendment, the norm, we expect, will be that there will be no smoking, as set out in subsection 2(1). However, should an employer wish to vary from that norm, and should he wish to establish a designated smoking area, we feel it should be clearly marked with signs to ensure that employees and other persons entering the workplace will know that in that particular area, smoking is permitted.

I think this is also consistent with the self-policing aspect of this sort of legislation. This is something we expect most employees will be able to recognize and police on their own, rather than something that will require inspectors to be called in for from the Ministry of Labour very frequently.

This is also consistent with some of the requests we have had from deputants and indeed some of the amendments moved by opposition groups today. I believe Mr. Sterling, if not Mr. Allen, suggested that the designated smoking areas should be clearly designated or identified, and I believe this would meet that objective.

Mr. Allen: If this were not serious legislation and serious discussion, this would be a real joke. Are these signs supposed to tell us where the smoke is coming from in the nondesignated area? When we cannot actually see the drift of the smoke, we will know that the pollution taking place in the workplace is originating in a particular area, so we will know that what is spread throughout the air space we are consuming as workers is coming precisely from that part of our workplace and not from someplace else?

This is certainly a parody, if not worse, of the notion that there should be a clearly designated and separate and separately ventilated area,

which is the only proposal I have put forward with respect to this and the only proposal Mr. Sterling has wanted as first choice in this legislation. Sure, let's support posting signs, but let's not kid ourselves that it really means anything in the context of this legislation or in the workplace that it applies to.

Mr. Sterling: Can I just ask a question here? The section as it now reads says, "An employer shall post and keep posted such signs as may be prescribed respecting smoking in a workplace." Then this, I assume, is almost one of the regulations that is going to be put into the legislation. Does the existing section sort of become redundant, then, or partially redundant?

Mr. Chairman: As I read it, it is added to the existing section.

Mr. Sterling: I know it is added, but I thought the first part gave the right to the Lieutenant Governor or the cabinet to make the rules on where to post them and where not to post them, etc., which I thought was probably a reasonable way to handle the situation, because you could make differing situations for different kinds of work situations.

Mr. Kanter: I am not sure, Mr. Sterling, if that was directed to me or to legislative counsel. I certainly noted in several of the motions you put today that you call for designated smoking areas, among other things, and no question about that: closed areas, designated smoking areas, clearly identified as such. I would argue that this motion is entirely consistent with that.

You may want to ask legislative counsel for further clarification of how it relates to section 4, but I think this is quite consistent with your initiative and indeed requests we have had from a number of deputants who appeared before us.

Mr. Sterling: Okay. It was just a question.

Mr. Chairman: Are we ready for the question? All those in favour of the amendment? Opposed?

Motion agreed to.

Section 4, as amended, agreed to.

Section 5:

Mr. Chairman: Mr. Daigeler moves that section 5 of the bill be amended by adding thereto the following subsection:

"Idem

"(2) An employer shall make every reasonable effort to accommodate employees who request that they work in a place separate from a designated smoking area."

Mr. Daigeler: We had a rather lengthy discussion earlier on the basic principles of this bill. I think the direction the government has taken is that it wants to encourage as much as possible a reasonable accommodation of all interested parties. This gives an added incentive to the employers to implement the bill in a way that meets the main objective which is to have a smoke-free working environment by realizing that under the present



circumstances, the ideal may not yet be obtainable.

I think the term "reasonable" is well known in the legal environment, is well understood and I think this does give an added impetus to the employer to respect the preferences of his or her employees.

Mr. Sterling: I would like to move an amendment to the amendment. I move that Mr. Daigeler's amendment be amended to strike out the words "make every reasonable effort to."

Mr. Chairman: So you are deleting the words "make every reasonable effort to"?

Mr. Daigeler: Mr. Chairman, it is my opinion that this would be contrary to the intent of this amendment and therefore would not be in order, but I am guided by you.

Mr. Allen: Can Mr. Daigeler explain that? I do not understand that.

Mr. Chairman: I would rule that the amendment is in order in that the thrust of your amendment is to accommodate employees.

Mr. Daigeler: The words are "make every reasonable effort to," whereas Mr. Sterling's intention obviously is to make it mandatory.

Mr. Chairman: I am being advised by legislative counsel and the clerk that it is a question of degree and moving in the same direction. As I said, we can debate a point of order or we can move along and vote on the amendment. Any discussion on the amendment?

Mr. Sterling: Yes. I understand Mr. Daigeler's reluctance to really put any teeth into this act and to really put any obligation on the employer to do anything, but quite frankly the amendment to subsection 5(2), as he would propose it, does nothing to improve the rights of the nonsmoker in the situation. All it does is say what they might issue a letter to every employer in the province saying, "Please, Mr. Employer, make some kind of reasonable effort to accommodate employees."

I would suggest that this amendment to the amendment I have put forward, by taking out "make every reasonable effort to," puts a clear obligation on an employer to accommodate an employee who requests that he work in a place separate from a designated smoking area. It really puts the cat among the pigeons in terms of this whole thing and does give the employee a right to a smoke-free work environment. I am foursquare behind that.

Mr. Kanter: I have been listening to Mr. Sterling with great interest today; however, I am a little surprised to hear that he is against reasonableness. I think reasonableness is a very well established criterion, particularly in the labour relations context: in arbitrations, in various appearances—

Mr. Sterling: I am quite reasonable, Mr. Kanter; It is the government side that is being unreasonable.

Mr. Kanter: We have been listening to you today. Just give me a moment or two. I do not think I have taken up quite as much of the time of this committee as you have. We have listened with great interest to your concerns.

First, I think reasonableness is really at the essence of our entire approach to this bill, including this provision which I think adds quite a significant new obligation to employers to make accommodations—yes, reasonable accommodations—depending on the size and scale of the operation. The parliamentary assistant was talking about the diversity of workplaces in this province.

I think there is another important aspect to be considered. It goes a little beyond your amendment, but when you look at the no-reprisal clause, when you look at the remedies: remedies under the occupational health and safety legislation, remedies that include arbitration for unionized employees, the right to go before the Ontario Labour Relations Board for nonunion employees, you will see that as well as establishing a new climate of nonsmoking as the norm, we have made it substantially harder for those employers who want to derogate from that norm.

1800

Those employers who want to establish smoking areas are going to have substantially more obligations to meet, and one of those additional obligations will be to make reasonable efforts to accommodate employees' requests that they work in a place separate from a designated smoking area. It is certainly my view that this establishes a substantially higher obligation on employers than was formerly the case and that that substantially higher obligation does have to be tempered by reasonableness.

If I can speak in support of Mr. Daigeler's motion and against your amendment to that motion, I think that your motion to strike out that clause would remove the effectiveness of the motion Mr. Daigeler has made, which I think would add considerable teeth to the legislation but do so in a way that recognizes the fact that yes, there are some employees, some long-time, valued employees in this province, who do smoke and there are some smaller employers who might have some difficulty making an accommodation but certainly should be obliged to make reasonable efforts to make that accommodation.

Mr. Chairman: Any further discussion on the amendment to the amendment?

Mr. Allen: On the amendment to the amendment, yes, certainly. There is such a thing as reason exercised in the service of unreason too. This gets more absurd with every little veil that slips off the dance.

We started off with a major assertion, "No person shall smoke in an enclosed workplace," and then we move to a section of this legislation which designates a meaningless smoking area of up to 25 per cent of the total workplace. That presumably was to harbour all the smokers and to recognize the rights of nonsmokers not to be in a smoking area, and that is presumably the reason why there is some separation there.

This tells us that in point of fact that workplace may still find nonsmoking employees who are located within so-called designated smoking areas, and now we are told that the employer must make every reasonable effort to get them out of there.

What is the service of reason in that? The service of reason is to strike out "every reasonable effort"—that is the only logic that I can see in it—to make the whole thing at least have some consistent strain of development.

The implication as I see it, and this is quite clear, is that, without any clause like this, apparently it is the government's intention that nonsmoking workers can find themselves enclosed in, harboured in these so-called designated smoking areas. Surely the least logic of the legislation has to be that the employer must accommodate a nonsmoking employee outside the designated smoking area.

What other logic can there be in this kind of a clause? To put "every reasonable effort" in there is to weasel around on this whole business in a way that I really find quite amazing.

Mr. Chairman: Any further discussion?

Mr. Sterling: Yes, I would.

Mr. Chairman: You are closing off the debate?

Mr. Sterling: Unless some other member wants to enter the debate, or dares enter the debate, I guess I should put it.

What is amazing about this particular section is that I do not know what anybody thinks a reasonable effort is, but presumably, if you write law, eventually it would filter down to a courtroom where somebody would give that kind of an interpretation to what a reasonable effort was or was not.

The absurdity of the clause goes down to looking at how this thing would in fact take place when it hits the workplace floor. Unless you make a rule like this in black and white, then the rule does not mean anything. What employee is going to be able to take an employer down the line in saying, "You are not being reasonable"? How on earth is that dispute going to be resolved? The fact of the matter is that you have to make these kinds of rules clear in black and white. Either the employee is entitled to have a workplace where there is no smoke or he is not.

What is a reasonable effort? I defy anybody to tell me what a reasonable effort on the part of an employer is with regard to this. An employee is really at peril when he starts to cross swords with his employer and ask a third party to say his effort is not reasonable or is reasonable. Who is reasonable?

Therefore, I would ask the members of the committee, in a last-ditch effort, to save the part of the bill having some meaning and to accept the amendment to the amendment. Take out "make every reasonable effort to" and give an employee the right to accommodation in a place separate from a designated smoking area. It is as simple as that.

Mr. Chairman: Are you ready for the question? The amendment to the amendment is to delete the words, "make every reasonable effort to," from the amendment moved by Mr. Daigeler. All those in favour of the amendment to the amendment? Opposed?

Motion negatived.

Mr. Chairman: Are you ready to vote on the amendment?

Mr. Sterling: The time is six o'clock. I think we should adjourn.

Mr. Kanter: Perhaps we could commence debate on it, Mr. Chairman. That would be reasonable.

Mr. Sterling: I do not think there is any debate on that motion, is there?

Mr. Chairman: Mr. Sterling moves a motion to adjourn. It is a nondebatable motion. All those in favour of adjourning?

Mr. Sterling: There is no choice. It is six o'clock.

Mr. Chairman: Opposed?

Motion negatived.

Mr. Chairman: I am advised by the clerk that the automatic six o'clock adjournment applies when the House is in session.

Mr. Sterling: I thought we said we were sitting until six o'clock earlier today. I thought you said that, Mr. Chairman.

Mr. Chairman: We did not reach a decision on it. I said I was in the hands of the committee as to when we adjourn.

Mr. Sterling: You can take the vote without me then.

Mr. Chairman: What is the pleasure of the committee?

Mr. Carrothers: Can we complete the vote on the section?

Mr. Chairman: The amendment before us is moved by Mr. Daigeler. Is there any need to read it?

Mr. Allen: I just do not understand how you carve any sense out of this. Either a designated smoking area is one which will not encompass nonsmokers or it does not mean anything. The moment you introduce this clause into the legislation, you raise that fundamental doubt about what a designated smoking area is. It seems to me to contradict the whole concept to have this even raised as a question in the context of the legislation.

The second point I would make is that even if it had any sense, what does "separate" mean? Does he have a right to be two inches away? Does he have a right to be two feet away? Does he have a right to be on the other side of the room? It is either patently obvious whatever is meant by a designated smoking area or it is not.

For you to introduce this and to crowd and murk up the whole question by introducing doubt as to what the designated smoking area actually is, which you have been unwilling to define in the first place, to me just adds one more element of lunacy about the whole bill. Mr. Chairman, with your leave, whether the committee continues or not I am afraid I am not prepared to continue without my fellow opposition member.

Mr. Chairman: I would point out to the committee that it is customary to have all parties present, although not required.

Mr. Carrothers: It is not required. I wonder if we continue tomorrow morning, Mr. Chairman, whether Mr. Allen will be able to be here.

Mr. Chairman: We are scheduled to meet at 10 in the morning.

Mr. Allen: I believe we are scheduled to start at 10.



Mr. Chairman: Yes.

Mr. Carrothers: Could we complete the motion then, Mr. Chairman?

Mr. Chairman: Yes. The committee is adjourned until—

Mr. Carrothers: No, could we complete voting on the motion?

Mr. Chairman: You want to vote on the motion now?

All those in favour of the amendment? Opposed?

Motion agreed to.

Mr. Owen: I move we adjourn.

Mr. Chairman: The meeting is adjourned until 10 o'clock tomorrow morning.

The committee adjourned at 6:10 p.m.



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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

SMOKING IN THE WORKPLACE ACT

FRIDAY, APRIL 21, 1989



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Neumann, David E. (Brantford L)

VICE-CHAIRMAN: O'Neill, Yvonne (Ottawa-Rideau L)

Allen, Richard (Hamilton West NDP)

Beer, Charles (York North L)

Carrothers, Douglas A. (Oakville South L)

Cunningham, Dianne E. (London North PC)

Daigeler, Hans (Nepean L)

Jackson, Cameron (Burlington South PC)

Johnston, Richard F. (Scarborough West NDP)

Owen, Bruce (Simcoe Centre L)

Poole, Dianne (Eglinton L)

Substitutions:

Cordiano, Joseph (Lawrence L) for Mrs. O'Neill

Kanter, Ron (St. Andrew-St. Patrick L) for Ms. Poole

Miller, Gordon I. (Norfolk L) for Mr. Beer

Sterling, Norman W. (Carleton PC) for Mr. Jackson

Sullivan, Barbara (Halton Centre L) for Mr. Daigeler

Clerk: Decker, Todd

Staff:

Nishi, Victor, Research Officer, Legislative Research Service

Hopkins, Laura A., Legislative Counsel

Witnesses:

From the Ministry of Labour:

Sullivan, Barbara, Parliamentary Assistant to the Minister of Labour  
(Halton Centre L)

Blair, Robert, Senior Solicitor, Legal Services Branch



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Friday, April 21, 1989

The committee met at 10:15 a.m. in room 151.

SMOKING IN THE WORKPLACE ACT  
(continued)

Consideration of Bill 194, An Act to restrict Smoking in Workplaces.

Section 5:

Mr. Chairman: This is a meeting of the standing committee on social development, convened to consider Bill 194, An Act to restrict Smoking in Workplaces. The committee has been proceeding through clause-by-clause consideration of the bill, and yesterday we had completed to the end of section 4. We had discussed and voted on one amendment to section 5, and I believe there are some further amendments to section 5. Mr. Allen, would you move your amendment?

Mr. Allen: You will note a slight alteration in the wording from what you have in your text, namely to begin with the words "the employer."

Mr. Chairman: Mr. Allen moves to amend section 5 so that it reads as follows:

"(1) The employer shall, after consulting with the employees, arrange and bear the cost of a smoking cessation program for each employee who desires such a program."

Mr. Allen: Subsection 5(2) would remain as it is because the final words in my amendment that you have in writing referred to a section that I proposed as an amendment that was not passed, which leaves the existing clause in section 5 as the second subsection in that part.

If I might just read the whole section 5 then for you, it would read as follows, as amended, if this amendment passes: "The employer shall, after consulting with the employees, arrange and bear the cost of a smoking cessation program for each employee who desires such a program," and then subsection 5(2) would be, "An employer shall make every reasonable effort to ensure that no person contravenes subsection 2(1)."

Mr. Chairman: I just want to clarify one thing. The sheet which you gave us with your amendment on it said, "Mr. Allen moves to amend section 5 so that it reads as follows," which could be interpreted to mean that what is already there in section 5 and has already been amended would be deleted. I take it you are moving that this be added to section 5?

Mr. Allen: That would be another way of doing it. What we have presently in section 5, as I understand it after our last vote in yesterday's meeting, we have now a subsection 1 which reads with the present wording, "An employer shall make every reasonable effort to ensure that no person contravenes subsection 2(1)." Then we have a subsection 2 which was passed—

Mr. Chairman: Yesterday.

Mr. Allen: Yesterday. So my amendment could be added as subsection 3 to that.

Mr. Chairman: Okay.

Mr. Allen: I had not taken account of what had been done in the last moments of yesterday's meeting.

Mr. Chairman: All right. That clarifies it.

Mr. Allen: Yes.

Mr. Chairman: Discussion on the amendment?

Mr. Allen: I will just say that it seems to me that legislation that attempts to enforce or promote a regime of nonsmoking in the workplace or, to put it in other words, to achieve a smoke-free workplace for all those employees who desire it and ideally for all employees within the workplace ought to take into consideration the working people who are impacted by this, who may have varying degrees of difficulty in coping with the smoking cessation and smoking restraints that are being legislated by legislation such as this or may be required by the employer in other circumstances.

These are, as some people have indicated, significant lifestyle decisions that individuals have made. We want to make certain those lifestyle decisions do not impact on other people. We cannot totally require that an individual abandon what may be a course of self-destruction, but at the same time one does have to respect that this is an individual decision and in important respects, so long as it remains in effect upon the individual himself, his decision. But for those who wish to comply with this legislation and see it implemented in a smooth and harmonious fashion, it seems to me that it is extremely important that the employer offer to the employees the opportunity of some assistance with the whole process of stopping smoking. Therefore, I have proposed that this amendment be included in the bill.

It does refer to the costs being borne by the employer. As I indicated with respect to another amendment yesterday, it has been part of the testimony before this committee that there are significant savings down the road for employers with smoking restraint programs in the workplace, in particular with a complete removal of that practice from the workplace. It seems only appropriate that the cost in that sense of smoking cessation programs be borne by the employer, and I have so moved.

Mr. Carrothers: I certainly have a great deal of sympathy for the point of view Mr. Allen has put forward, drawing, I guess, on personal experience. I have, in a previous incarnation, gone through the implementation of a nonsmoking policy. In fact, in that circumstance the employer did indeed support and pay for a program. But given the tremendously different numbers and the tremendous variation of employment circumstances across our province and perhaps the fact that not every employer would be in a position to do this, I have a great deal of reticence about making something like that mandatory right across the board. I think we all hope this would happen. Perhaps there may be other ways to encourage employers to do this, but I have to feel that making it mandatory for every employer in every circumstance is basically interfering too much in the employer-employee relationships in this province and I really feel I cannot support that type of thing in this legislation.

Mr. Sterling: I would like to support this, but unfortunately I cannot support it. I believe it is the function of the government to provide funding in terms of preventive health care steps such as this and would be happy to support an amendment which would put the cost of such a cessation program on the shoulders of the Ontario government. I do not mind obligating the employer to arrange for the program, but I do feel that the costs, because of the significant revenues that the government draws from the sale of tobacco of which it is only pouring back in about one third to half a cent per package—in terms of dealing with the ill effects of tobacco in trying to get tobacco producers out—that it could throw in the other half cent per package and deal with cessation programs across our province.

I just think, quite frankly, that employers are going to have to bear some costs in the conversion, and I think it is perhaps unfair to throw this additional cost upon them. I am sorry, Mr. Allen, that I cannot support you in this particular amendment.

Mr. Chairman: Any further discussion? Ready for the question?

Mr. Allen: I have not noticed that Mr. Sterling has an alternative amendment. Are you proposing to introduce something, Mr. Sterling, if this in fact fails?

Mr. Sterling: Yes. Let me move an amendment to the amendment. I move that Mr. Allen's amendment be amended by striking out "bear the cost of" and adding at the end of that particular amendment—

Mr. Allen:—"the cost of which would be borne by the provincial government."

Mr. Sterling: Yes.

Mr. Carrothers: Point of order, if I could interpose. I think Mr. Sterling has raised a very interesting suggestion and it may be worthwhile for the government to consider what it can do to encourage it, but I would like to point out that Mr. Sterling has now moved an amendment in this bill which would create a financial liability. I believe that turns this into a budget bill, a matter which I am not sure is in order to be moved by a nonmember of cabinet, if I understand the procedure. Second, it would turn this into a confidence bill. I am wondering if it is in order for that amendment.

Mr. Chairman: The first part of the amendment could have been in order, but the last part is not in order.

Mr. Carrothers: It is an interesting suggestion, none the less.

Mr. Chairman: I can quote the relevant section, if you wish, in Beauchesne's Parliamentary Rules and Forms, "Admissibility of Amendments in Committee: An amendment is out of order if it imposes a charge upon the public Treasury, if it extends the objects and purposes or relaxes the conditions and qualifications as expressed in the royal recommendations."

Mr. Sterling: I agree that your ruling is correct, and probably the amendment to the amendment is out of order under our present rules. For some time, in terms of our party's and the New Democratic Party's position, with regard to amendment to the standing rules, for this Legislature to put forward the fact that the rule is outdated, is ridiculous, and it has no bearing on the present-day parliamentary system. It is unfortunate that a government

member would seek to rule this particular amendment to the amendment out of order. Obviously he does not want to face the question. Whether it is in order or not does not really matter. It is just like the particular situation we had yesterday. The tradition behind this rule, that emanated out of the 1800's, which has nothing to do with—

Mr. Cordiano: Point of order.

Mr. Chairman: State your point.

Mr. Cordiano: It seems to me that you are discussing or debating the question of rules on parliamentary procedure. I think you are getting off the topic a little bit, Mr. Sterling.

Mr. Sterling: No, I am not, I am right on topic.

Mr. Cordiano: No, I think it is a question of rules.

Mr. Sterling: Let me put my point forward and then they can say all they want.

Interjections.

Mr. Chairman: Order. One person at a time, please. A point of order has been raised and the point is well taken because points of order are not debatable. I have made my ruling and it is not debatable, so what is before the committee at this time is the amendment which Mr. Allen put forward. You may speak to that amendment, Mr. Sterling.

Mr. Sterling: Okay, I will speak to that amendment and say that I would have loved to have amended Richard Allen's amendment to thrust the cost of cessation programs on the government, but I realize, Mr. Chairman, because of the government side, you have ruled against this as being out of order, and Mr. Carrothers is most anxious not to face issues head-on and deal with them in a reasonable and logical fashion. There are lots of things that are done in committee and in the Legislature, as you know, by unanimous consent. Just about every day we break the standing orders by consenting to this. Now—

Mr. Chairman: Mr. Sterling, you are walking a very fine line, and indeed you are going over it. I am advised by the clerk that even if every member of the committee wished to vote down my ruling, it is beyond the purview of the committee.

Mr. Sterling: And who is going to call us into line?

Mr. Chairman: I am getting advice here. I am trying to be as objective and as fair as I can. Legislative counsel will address this.

Mr. Sterling: Before we go further, I think I have made my point with regard to the matter, and if I wanted to go further, I would just challenge your ruling and we would be here until five o'clock this afternoon.

Notwithstanding that, my feeling on Mr. Allen's amendment is that this is a good thrust. I only wish the government would stand behind its professed desire to have smoking reduced in our population from approximately 30 per cent to 15 per cent. If this bill was decent and not a joke, as it is, that would help. Mr. Allen's step would help even further if in fact the government got behind a cessation program, as it has for public servants of our province.



I do not understand, quite frankly, why the private citizen is being discriminated against in being offered this service by the government of Ontario. Each public servant in Ontario is given up to \$100 to enrol in a valid cessation program, and I think the government of Ontario should meet that obligation for every private citizen.

Mr. Chairman: Thank you. Further comments on the amendment?

Mr. Carrothers: Just one brief comment. I am intrigued by the suggestion that somehow we should not follow the rules of order, but be that as it may, if I could just note—

Mr. Chairman: Can we please not get back into that, Mr. Carrothers?

Mr. Carrothers: No. The parliamentary assistant is here and she has her dissentiments. Perhaps, Mr. Sterling, they can consider whether the government could come up with some programs to help employers here. That may be the more appropriate way to deal with this: not the completely across-the-board statement Mr. Allen is making, but perhaps some government programs. I am sure the parliamentary assistant will take this under advisement and take that back to the ministry.

Mr. Allen: That is a nice sentiment, but given the fact that the government has generated this bill in the first place, has heard the testimony it has heard and has had the opportunity to make amendments and has not come forward with any device whereby the cost of smoking cessation programs can be taken off the individual who is being legislated into a difficult situation of having to face up to that problem through this legislation, is, I think, a piece of real irresponsibility.

On the one hand, the government refuses to introduce an amendment to this effect; then it invokes rules of order to prevent someone else from doing so; and then when one suggests that the employer, who will be the long-run beneficiary in economic terms from this legislation, should not bear the cost, then of course one simply leaves the individual worker who is impacted by this legislation to bear the cost. I think that is highly discriminatory and massively unfortunate. We were told in the testimony we heard that when these offers are made in the workplace, it is remarkable what a small percentage of the workers actually take them up, so it is not as though every single worker in the workplace who smokes is going to take the option, follow through and place that cost on an employer.

That quite clearly is not the record of how it happens. The cost is not immense and the cost, whether it is a small workplace or a big workplace, normally would be in proportion to the revenue-earning capacities of a firm. The longer-term savings for an employer would certainly compensate him for having undertaken to help the employees in that way.

I think it is unfortunate the government is not prepared to move in this direction, but I want to see the vote in any case.

Mr. Chairman: Mr. Allen has concluded the discussion.

Mr. Sterling: Before we vote on this amendment, I invite any government member to put forward my amendment. Go ahead. You have the authority to do it under our standing rules. Therefore, if there is any support over there, Mrs. Sullivan has that authority.

Mr. Carrothers: It has to be a member of cabinet.

Mr. Sterling: Maybe we should adjourn until we get a member of cabinet.

Interjection.

Mr. Sterling: She is standing in his place.

Mr. Carrothers: I take your point about the rules perhaps needing changing, but at this point we are stuck with what they are.

Mr. Sterling: Let's ask the clerk and the chairman whether a government member on instructions of the parliamentary secretary can in fact put forward an amendment.

Mr. Chairman: The clerk advises me that any amendment involving the expenditure of money must come from a minister of the crown and must have the recommendation of the Lieutenant Governor.

Mr. Allen: I move that we adjourn until the minister can sit with us to put forward such a motion.

Mr. Sterling: I would support that. I think one of the problems we have had with the hearings is that, unfortunately, the minister has been ill. Mrs. Sullivan has not been able to attend the hearings. I wanted to ask her today whether she has had a chance to view all the tapes of all the presentations. Perhaps she could answer that for me. There are a lot of problems associated with—

Mr. Chairman: Just a moment, Mr. Sterling, you are out of order. A motion has been moved to adjourn and that motion is not debatable. You have moved the motion to adjourn, Mr. Allen?

Mr. Allen: Yes, I moved a motion to adjourn because it seems to me we are at a stalemate in the proceedings of this committee. We do not have a legitimate cabinet representative here before us to deal with this matter.

Mr. Chairman: It is not debatable. I am just clarifying that you had.

Is it the pleasure of the committee that the motion carry?

Motion negatived.

Mr. Chairman: Are you ready to vote on the amendment? Is it necessary that I read the amendment?

All those in favour of the amendment? Opposed?

Motion negatived.

Mr. Chairman: Are there any further amendments to section 5?

Mr. Sterling: I believe you have it in front of you.

Mr. Chairman: Mr. Sterling moves that section 5, "An employer shall make every reasonable effort to ensure that no person contravenes subsection 2(1)," be amended by adding thereto the following subsection:

"every employer must publish and provide upon request of an inspector or an employee a floor plan showing the designated smoking areas for that workplace."

That would be subsection 5(3), not 5(2), because we have had one amendment.

Mr. Sterling: Yes.

Mr. Chairman: Would you like to speak to this before we open it up?

1040

Mr. Sterling: Yes, I will speak to it very briefly.

Because of the concern raised through publications by the Canadian Tobacco Manufacturers Council, which was suggesting in its brief to employers that they have moving sites of designated smoking areas, I feel it is important at the present time, through the bill, that the particular designated smoking areas be known to the employees and to any inspector who comes in the particular premises.

I believe we have already passed amendments to the act that say there has to be proper designation in terms of signs. Therefore, it is clear to me that it is going to be necessary, in order for there to be any order to this particular law, to have some kind of document that says: "This is a smoking area. This is not a smoking area."

All I am saying here is that an employer, if he is asked by an employee, must show him. What in effect it will mean is that probably the employer will post a floor plan showing the smoking areas and the nonsmoking areas. It just leaves the nonsmoker in a little less precarious position in terms of knowing what the rules are where he is going to have to work.

Mr. Kanter: At first glance, I found Mr. Sterling's proposal somewhat attractive, but when I considered it a little further, I had some difficulties with it. Some of the points he has made we have addressed. We have moved an amendment that I think more clearly fixes the location of the designated smoking area should an employer wish to establish one. We have required that it be signed and that was an amendment supported by all members of this committee.

With respect to floor plans, that probably would not be a difficulty for a large and sophisticated employer. It might be a difficulty for a smaller employer. I think of the case of someone who owns a small clothing store, restaurant or something of that type who may not have floor plans. It could be another type of establishment, a service establishment, a one-person or two-person law firm or something like that. I do think it would be reasonable to require floor plans to be produced in difficult or contentious situations, perhaps when an inspector is called when the two parties cannot work it out.

As I said, I initially had some sympathy to a limited production of plans but as I look at the actual act, I see section 6 provides very similar powers to inspectors:

"6(1) An inspector appointed under the Occupational Health and Safety Act may inspect enclosed workplaces to determine whether the act is being complied with.



"...an inspector,

"(b) may require the production of any drawings, specifications or floor plans for an enclosed workplace...may inspect, examine and copy them."

I think that is a good section, a good balance. An inspector may be called in if an employee feels the employer is not complying with section 4 about signs or section 5—I guess section 5 is the key one—if the employer is not making reasonable efforts "to ensure that no person contravenes subsection 2(1)."

The most reasonable part, if I may use those words, of your proposal is that floor plans should perhaps be produced to an inspector and I think the act already contains precisely that provision. Therefore, after some thought and consideration—this is not something I dismissed out of hand—I think that on balance the act deals in quite a reasonable manner with the production of floor plans to an inspector, should he deem it necessary.

I will not support Mr. Sterling's amendment.

Mr. Sterling: Can I just ask a question in response.

Why would an employee ask for a plan if there was not a dispute? That would be the obvious case. Why do you want to call in an inspector if in fact the employee can get a plan and work it out with the employer and say, "Okay, let's deal with it." Quite frankly, you are saying in here that this is going to in some way protect an employee. I do not really come to that conclusion.

Notwithstanding that, I just do not understand why an employee cannot know what his rights are. We require him, under the workplace hazardous materials information system legislation, to be informed of the various toxins he is working with, etc. All I am asking is that he have a right to know whether he is located in a particular smoking area. The signing will take care of part of it, but the problem with this legislation is that you may have an open room divided in two. You may have smoking on that side and nonsmoking on this side. Therefore, you either paint a line up the middle of the rug, which I suggest is not going to be done, or you have to paint the line on a drawing somewhere.

I just do not understand the overwhelming objection to this. Maybe you can enlighten me in terms of the dangers in passing this. It is going to throw an obligation on the employer to provide. But if the employee were trying to be a real pain in the neck for the employer or a whole group of them, all he would have to do is produce one and put it up in the lunchroom, would he not? He could produce it on a photocopier, as to what it was. Even in a small establishment, a floor plan can be as easy as a drawing that would clearly define where the line was. I do not understand the objection.

Mr. Allen: I would say that, likewise, I found the objection pretty murky. Surely one of the objectives of good legislation of this kind is to render the institution in question as self-policing as possible, so that resort to having government intervention, resort to inspection, etc., do not have to be the courses by which enforcement takes place.

It would have seemed to me that it would be the soul of reason itself for an employer, who is mandated under this legislation to establish clearly defined nonsmoking areas, to develop a floor plan that would at any given time indicate what those designated smoking areas are and how they are separated



from the smoke-free area of the workplace.

What Mr. Sterling is proposing is simply a very obvious requirement on an employer that will make the workplace relatively self-policing in this respect. How many places of employment were we told there are in Ontario? There are over 250,000 or whatever. How often are the inspectors going to get there? This is always one of the big problems with inspection. You always have a cadre of inspectors who are insufficient to the task. I do not know of any inspection system that is adequately manned in terms of personnel, so you want to have the workplace as self-policing as possible.

Surely this is an elementary element of a self-policing system in a workplace: to provide the employee with the designated areas clearly marked out on request, so there can be no dispute, or if there is a dispute, then we know what the dispute is over.

Mr. Chairman: Are you ready for the question? All those in favour of Mr. Sterling's amendment? Opposed?

Motion negatived.

Mr. Sterling: You guys are amazing. I can't believe it.

Mr. Chairman: Are there any further amendments to section 5? Shall section 5 carry, as amended?

Section 5, as amended, agreed to.

Section 6:

Mr. Chairman: I have notice of two amendments to section 6. Are there any government amendments? I have not received any. Mr. Allen, would you move yours?

Mr. Sterling: My amendment is to section 7.

Mr. Chairman: The one you have identified for section 6 will be in section 7?

Mr. Sterling: Yes.

Mr. Chairman: Okay.

Mr. Allen: We should perhaps move to that, because I have been advised by legal counsel that my motion might better come up as a new section 7a.

Mr. Chairman: So the one you circulated—

Mr. Allen: Will be section 7a.

Mr. Chairman: —will be section 7a. Is that the one you circulated?

Mr. Allen: With a slight amendment.

Mr. Chairman: With a slight change, so I can put the old one aside?

Mr. Allen: Right.

Mrs. Sullivan: Mr. Chairman, if I could, we have three—

Mr. Chairman: Just a moment. Are you moving any amendments to section 6?

Mrs. Sullivan: No, I am not.

Mr. Chairman: Is anyone moving an amendment to section 6? Shall section 6 carry?

Section 6 agreed to.

1050

Section 7:

Mrs. Sullivan: I note there are three proposals in relation to amendments for section 7. In each case, they deal with reprisals against an employee. We clearly have had similar but different advice as to where to place them, but the government motion on section 8 is virtually identical to Mr. Allen's motion on section 7.

There is one change that is not incorporated into Mr. Allen's, but which we would want to incorporate into ours to ensure that any contravention, whether it is under section 7a or subsection 8(1), would also be subject to penalty.

Because they are so similar, I wonder if we can come to some sort of accommodation about whether it should be in section 7 or section 8, and then proceed from there. Clearly, there is agreement between all three parties that we want to include a nonreprisal section.

Mr. Sterling: I will not put forward my proposal. I think the other two are better than my amendment.

Mr. Chairman: Thank you; that is helpful.

Mr. Allen: In terms of the observation of the parliamentary assistant, I think a section on offences should be separate from the nonreprisal section per se. There are amendments that concern the offences section per se coming up under section 8. Could I just simply proceed to move my amendment, section 7a? If there is any slight modification to that which the parliamentary assistant or the government wishes to make in terms of any modified wording they want to use with respect to the language of what this section is—namely, derived from the Occupational Health and Safety Act—then they might simply modify that. Could I move section 7a?

Mr. Chairman: Yes, you may, but just before you do, I will inform the committee of some advice I have received. In moving your proposed amendment, section 7a, the effect of it is that it comes between sections 7 and 8, and the government's amendment being moved as part of section 8 has exactly the same effect, according to legislative counsel. So it makes no difference which one is moved, and if the government wants to amend your amendment in some way, that can be accommodated.

Mrs. Sullivan: No. We are prepared to accept this amendment.

Mr. Chairman: Mr. Allen moves that the bill be amended by adding

thereto the following section:

Prohibition

"7a(1) No employer or person acting on behalf of an employer,

"(a) shall dismiss or threaten to dismiss an employee;

"(b) shall discipline or suspend an employee or threaten to do so;

"(c) shall impose a penalty upon an employee; or

"(d) shall intimidate or coerce an employee,

"because the employee has acted in accordance with or has sought the enforcement of this act.

"Application of RSO 1980, c. 321

"(2) Subsections 24(2) to (8) of the Occupational Health and Safety Act apply with necessary modifications when an employee complains that subsection (1) has been contravened."

Mr. Chairman: Is that last part part of your amendment?

Mr. Allen: Yes. "Application of RSO 1980, c. 321" is in as a marginal note, and I am not sure whether you want that read into the amendment as such. What is under subsection 7a(2) is a distillation, in effect, of the application of the grievance procedures, the appeals, processes and so on that are available to an employee under that part of the Occupational Health and Safety Act.

Mr. Chairman: Is there discussion on the amendment moved by Mr. Allen?

Mrs. Sullivan: I would just say that we are prepared to accept this amendment. As was heard from witnesses and indeed from members of the committee, there is general agreement that this is an important strengthening addition to the bill and we support it.

Mr. Chairman: Are we ready for the question, then?

All those in favour?

Opposed?

Motion agreed to.

Mr. Chairman: Are there any further amendments to section 7? Shall section 7 carry as amended?

Section 7, as amended, agreed to.

Section 8:

Mr. Chairman: Mr. Owen moves that section 8 of the bill be struck out and the following substituted therefor:

"Offence

"(1) Every person who contravenes subsection 2(1) or 6(3) is guilty of an offence.

"Idem

"(2) Every employer who fails to comply with section 4 or 5, or an order made under subsection 7(1) or who contravenes subsection 7a(1) is guilty of an offence.

"Derivative

"(3) Every person who causes, authorizes, permits or participates in an offence under subsection (2) is guilty of an offence.

"Penalty

"(4) On conviction of an offence,

"(a) every person who is not an employer is liable to a fine of not more than \$2,000; and

"(b) every employer is liable to a fine of not more than \$10,000."

Mr. Chairman: The clerk is making copies of this in that it is slightly different from what was circulated as the bottom half of the original government amendment under section 8. We shall have copies shortly. Mr. Owen, did you wish to start off discussion on this?

Mr. Owen: Obviously, I think it is appropriate that an offence is spelled out; when we are saying something is prohibited or any action on the part of an employer or an employer is wrong under the statute, we should spell out some way of dealing with it. I know we have had some varying representations as to what the fine should be. I know some have said that \$2,000 is too large for an employee or a person other than an employer, but I feel that if we think the statute has meaning and has validity we should see that it is enforced.

I know some have said that the fine should be larger than \$2,000 and some representations have indicated as high as \$25,000, but I am mindful of the fact that in Ontario we are dealing with many small businesses. I think the penalty of \$10,000 is no small amount or sum, but that it is in keeping with our first steps in this direction in terms of prohibiting smoking in the workplace. It shows that we mean business and at the same time I do not think it is overly heavy handed, as I think would be the case with \$25,000.

I am also mindful that some of the larger industries would not think twice about a penalty or fine of \$25,000, but we are dealing with the entire province and the entire gamut of businesses and industries, small and large.

1100

Mr. Sterling: Notwithstanding that there will never be a prosecution under the act because of the fact that it is so loose, I am going to move an amendment to the amendment.

Mr. Chairman: Mr. Sterling moves that the government amendment to section 8 of the bill be amended by deleting "\$2,000" in clause 8(4)(a) and



substituting therefor "\$500," and deleting "\$10,000" in clause 8(4)(b) and substituting therefor "\$25,000."

That has been moved as an amendment to the amendment. Mr. Sterling, your comments first.

Mr. Sterling: First, I think Mr. Owen's scenario of a small business being faced with a fine of \$10,000 is really impractical. The fact of the matter is that we are talking about maximums and the judiciary are very cognizant when they set fines about the size of the institution and the gravity of the offence, if this would ever come to a prosecution which, as I said before, is very unlikely because of the looseness of the legislation.

The other thing I think is important is that, if criticism emanates out of a penalty to an individual who basically is smoking in a nonsmoking area, the people who are on the other side of this kind of legislative thrust will use that particular figure as a sword to cut any kind of legislative piece like this to bits. They will say: "If you're smoking in a nonsmoking area, you are subject to a fine of \$2,000." They will not say "up to" or the likelihood of that ever happening.

Therefore, the reasonableness of the maximum on the individual is important for us to consider here. The reasonableness of the maximum on an employer, I would argue, is almost opposite in terms of how it would impact on the public. Notwithstanding my very great desire to have people comply with any legislation, I just think that the two fines I introduced in terms of the experience I have had in talking with people makes a little more sense than the ones that have been put forward.

Mr. Chairman: Any further discussion?

Mr. Allen: I would support Mr. Sterling's amendment to the amendment, partly because it approximates my own amendment I would have moved for fundamentally the same reasons. I think that \$2,000 remains an inordinately high figure as a maximum fine for an individual infraction. Anybody who faces a fine of anywhere up to \$500 for a single smoking infraction is obviously going to find that an intimidating figure. I do not think there is any question about that. Certainly, one is not going to repeat it day after day, subject to subsequent offences and subsequent penalties of that order. I believe \$2,000 is too high as a maximum:

On the other hand, we certainly did hear testimony which told us that the fines in connection with equivalent offences under the occupational health and safety act with regard to pollution of a workplace atmosphere with similar and often less dangerous chemical substances does put in place a maximum of a \$25,000 fine. I am not certain I understand why there would be any significant difference in the fine level between these two pieces of legislation, so I support Mr. Sterling's proposal for a \$25,000 maximum under the offence that applies to the employer.

Mrs. Sullivan: If I may speak to this, as you know, we have put forward recommendations which meant a change, and the substance of the change was really to increase the penalty for the employer. We are prepared to accept the amendment as put forward, given the argumentation of the responsibility and the penalty to the individual and indeed the thrust of responsibility that the act puts forward to the employer.

Mr. Chairman: Ready to vote on the amendment to the amendment?

All those in favour?

Opposed?

Motion agreed to.

Mr. Chairman: On the amendment, as amended, all those in favour?

Opposed?

Motion agreed to.

Section 8, as amended, agreed to.

Mr. Chairman: I did not ask for further amendments because I noted that the ones circulated all related to what we just voted on.

Section 9 agreed to.

Section 10:

Mr. Chairman: Are there any government amendments to section 10? No.

Mr. Sterling: I have two amendments to section 10. The first one relates to subsection 10(2).

Mr. Chairman: Mr. Sterling moves that subsection 10(2) be deleted and replaced by the following:

"Nothing in this act prevents a municipality from passing bylaws respecting smoking in workplaces and in public places."

In effect, your amendment is simply to add "and in public places"?

Mr. Sterling: Yes. I do not know whether that causes any problem or not. I will just speak briefly. My reason for adding "and in public places" is because there are, I believe, some 60 municipalities that deal with controlling smoking in public places. There is a mix here in terms of some kinds of workplaces. There may be an argument where you have the crossover between the two and therefore I was just trying to make it clear that there could never be an argument that a restrictive bylaw in a public place was lapping over in terms of this particular legislation. I do not think it would cause a problem.

Mr. Carrothers: Could I comment, Mr. Chairman? Perhaps legislative counsel can help. Again, I guess we are back to the discussion we had when you came up with your next amendment last time, and that is the question of extra phrases going in legislation. I have seen it happen so many times. A court will try to decide that there was a reason for it, and I have seen some rather—I think probably, Mr. Sterling, you have as well—contorted decisions come out, perhaps based on trying to find a meaning for wording that was not there.

This bill is dealing only with the workplace. I wonder if there would really be any implication at all that it would restrict the municipality's rights to deal in public places and therefore wonder if putting this in would not be stating the obvious and perhaps, by doing so, creating the possibility I just mentioned, that someone would try to find meaning for words that did

not need to be there and end up with an interpretation we did not want. I am wondering if legislative counsel has any thoughts on that.

Ms. Hopkins: The short answer to that would be yes, I agree with you. To the extent that the bill is concerned with workplaces, "workplaces" includes public areas in workplaces. To the extent that the bill does not deal with public places that are not workplaces, we do not need to have this language in. It is not within the scope of the bill.

Mr. Sterling: Okay. I will withdraw the amendment, Mr. Chairman.

Mr. Chairman: The amendment is withdrawn.

1110

Mr. Chairman: The amendment is withdrawn.

Mr. Sterling moves that section 10 of the bill be amended by adding thereto the following subsection:

"(3) Nothing in this act derogates from the right of an employer to prohibit smoking in a workplace or from the rights of an employee to a smoke-free workplace."

Mr. Sterling, have you written that out?

Mr. Sterling: The first part of it. I have added to it, "or from the rights of an employee to a smoke-free workplace."

Mr. Chairman: I do not have that. I just want to be clear on what is being moved, first of all. I did not have a copy of that. Your comments, Mr. Sterling.

Mr. Sterling: Yes. Two things I would like clear in this legislation are that an employer has the right to prohibit smoking in a workplace, notwithstanding the fact that this legislation says he can or may designate 25 per cent of the workplace as a designated smoking area, and that any of the rights that an employee now has under other legislation or at common law stay and this does not cut off those particular rights.

Mr. Carrothers: We may be entering into the same point I made just a moment ago in the previous amendment. Going back to discussions yesterday on the first half of this, we did have some discussion about how we might indicate in this legislation that we are not stopping an employer from entirely banning smoking in the workplace. We agreed this was the place, and I certainly feel that the first part of this statement, just clarifying something and putting it in this part of the legislation, is not going to create confusion.

I do feel, however, that the additional words Mr. Sterling has just added start stating the obvious. There is nothing in this that would take away from whatever rights there are in common law. I am concerned that these added words would end up creating confusion, again trying to find reasons for them to be there when they do not need to be there; sort of contorted judgements. I would therefore move an amendment.

Mr. Chairman: Mr. Carrothers moves an amendment that the words, "or from the rights of an employee to a smoke-free workplace," be deleted from

this amendment.

Mr. Carrothers: I am assuming I have the words correctly, because I do not have a copy in front of me.

Mr. Chairman: The amendment to the amendment moved by Mr. Carrothers is now before the committee.

Mr. Sterling: Could legislative counsel or perhaps the Ministry of Labour officials comment with regard to the last part of my amendment?

Ms. Hopkins: I was just conferring with Mr. Blair of the Ministry of Labour, who is more familiar with this aspect of employment law than I am. Perhaps he can help you.

Mr. Blair: What I was discussing with Ms. Hopkins was this kind of language that is intended to ensure that a piece of legislation is not taking away or altering other rights which may exist out there. The premise behind that is not that the legislation is saying that there are or are not such rights, but if there are such rights, it makes it clear that it is not disturbing them.

It is my opinion that in the absence of clear language, any existing rights really would not be affected. If there are vested rights, it is going to take clear legislative rights to affect them, so the real legal effect of that portion of your amendment, Mr. Sterling, is probably minimal. It is sort of a question of reassurance, really.

Mr. Sterling: Can I ask this question? I guess it becomes, in a practical sense: What would happen if a nonsmoking employee is forced to work in a designated smoking area? That can happen under this bill quite easily and that is the major objection I have. Under the bill, as admitted by you or your ministry, he does not have any right to demand a nonsmoking area. But under other legislation, let's say the health and safety legislation or a common-law right that springs from somewhere, he says to the employer in bringing suit, "You've got to provide me with a nonsmoking area." The employer comes back and says: "But Bill 194 says I have the right to designate 25 per cent. I, the employer, have the right to designate this 25 per cent. Unfortunately, buddy, you're in that area."

I guess what I am concerned about is that the employee is then thrust into a situation of not only repelling and putting forth a positive case to enforce his rights, but he has now also got Bill 194 to deal with. I was trying to get over that particular situation.

Mr. Blair: I understand your concern. The argument that would likely prevail there is that all that the 25 per cent rule in this bill does is operate as an exception to this bill's prohibition against smoking; it is a general prohibition against smoking in the workplace with an exception. That is all it accomplishes; so it does not affect those rights.

Mr. Sterling: Of course, whatever our intention here in the Legislature is, whatever we say in the committee should not be used in a court of law. Therefore, the policy or what the thrust of the bill is is not important to a court case. What is written in law is important.

Mr. Blair: If I were going to include such language, I would probably word it a little differently and a little more generally to say "any



rights that employees may have under other acts or at common law." Legislative counsel is better at that sort of stuff than I am, clearly.

Mrs. Sullivan: But what you are saying is that this is not necessary, given the other portions of the act.

Mr. Blair: It is not necessary, and neither, in my view, is this entire amendment, really. We are saying what we already believe to be the case and what everybody here understands to be the intention of the bill, that it is not meant to derogate from an employer's right to prohibit smoking in a workplace, nor is it intended to derogate from any other rights employees or anybody has, whether it is under human rights legislation, occupational health and safety or common law. It is just a bill to prohibit smoking in a workplace, and that prohibition is subject to certain exceptions.

Mr. Kanter: That last statement really gets to the question I wanted to ask of Mr. Blair.

I took it that your comment was that section 10 in its entirety, as proposed by Mr. Sterling, is not perhaps essential, in your view, or perhaps does not add anything, in your view, because it is inherent in the way the bill was drafted. What I did not and do not understand is whether your comments apply more specifically to the second part dealing with the rights of an employee, whether it applies any more to that part than to the rights of the employer.

In other words, if we were to accept the first part, would there be any argument that it stands on firmer ground than the second part? Is it all or nothing?

Mr. Blair: There would be another one of those arguments available, frankly; they may be farfetched arguments, but the argument would be: "They have said that nothing in the act derogates from the employer's right to a smoke-free workplace. So by that you can conclude that they meant to derogate from any other rights that happen to be out there in the world."

Mr. Kanter: Would I be correct in assuming that you would feel more comfortable—let's put it this way—if we had it either all in or all out? If we talk about rights of employers, we should also talk about the rights of employees.

1120

Mr. Blair: As I think about it, and I am thinking about as we have been discussing it, there is a certain balance to having them both; if you are going to have one, have the other.

Mr. Kanter: Let me just ask one final question, because this has been quite helpful.

I take it that while you may not feel it is absolutely essential to have the sentiments in—nor do you feel that it necessarily harmful to have the sentiments in—however, you did express some concern about the precise words; the precise language. You seem to prefer a somewhat different way of putting the sentiments that Mr. Sterling has expressed. Is that correct?

Mr. Blair: Yes. I was suggesting that maybe the language could be changed to something in the nature of "any rights that employees may have at common law or otherwise"—words to that effect. I believe legislative counsel is thinking about it right now.

Mr. Kanter: Presumably it would be words to the effect that "any rights that employers or employees might have at common law or under any other statute would not be affected by this legislation." You did say you wanted it to be balanced between employers and employees.

Mr. Blair: Yes. That is right. I think—

Mr. Chairman: I am wondering whether a five-minute recess might be in order to get some wording worked out here?

Mr. Carrothers: Could I just make a comment and perhaps add my views to this and maybe make a slight confession to this committee?

Mr. Chairman: Yes.

Mr. Carrothers: In a previous incarnation, and one of my reasons for wanting very precise wording, I have had dealings with legislation, and working with and interpreting it, and I have had occasion to be able to use wording that perhaps is extraneous to the purpose of a bill to the advantage of the client who was at that time retaining me.

That is the nature of being a lawyer, and I make no apologies. But I am suggesting, and one of my reasons for wanting to be precise is, I have seen legislation kind of turn a corner that was not anticipated because you started perhaps putting in words that may or may not do anything, taking the legislation into areas that it was not intended to deal with. You then are faced with a court interpreting it literally and narrowly, saying, "Gee, they must have meant something; let's find out what they must have meant." Then all of sudden you find yourself going down a road you did not want to go. I make that confession because I have made those arguments and had them accepted.

I guess I go back to my amendment and suggest that the first half dealing with the fact that the employer could certainly prohibit smoking in the entire workplace—we are dealing with workplace—that statement is perhaps declaratory and is not taking us into this realm of confusion. I still maintain—it is personally my view, and I will put that as a personal view for the committee's use—that these extra words could lead this into a question of what were the common-law rights; is it meant to change common-law rights.

I really think we do not need to get into it and perhaps might end up causing something to happen we do not intend by doing this. I prefer my amendment, obviously, and suggest that it be supported by this committee.

Mr. Chairman: What is the committee's pleasure? Further discussion on the amendment to the amendment?

Mr. Sterling: I am consulting with legislative counsel, who has consulted with the Ministry of Labour as to the kind of wording that should be there instead of perhaps the wording I had. I will withdraw my previous amendment.

Mr. Chairman: Mr. Sterling moves that section 10 of the bill be amended by adding thereto the following subsection:

"(3) Nothing in this act derogates from the right of an employer to prohibit smoking in a workplace or from the rights of an employee respecting smoking in a workplace.

Mr. Sterling: That way it covers common-law rights that might have been there or a statute right which may have been there.

I still maintain that in our hearings in front of this committee, there was a miscomprehension of what this bill was doing in terms of the public out there, and there was a miscomprehension that somehow this bill gave rights to smokers and that employers were being forced to be less stringent in terms of their policies in that regard.

Therefore, I do not think this takes anything away from the legislation, nor do I think that it in fact would hurt any of the interpretation involved. What will happen in a practical matter is that people will pick up this bill and they will read from one end to the other. They will not, perhaps, have a knowledge of what the common law is or is not. But I think it is important, when we write legislation, that we try to write it in a language which the common man, the layman, can understand. Therefore I would urge the committee to accept this particular amendment.

Mr. Chairman: The amendment to the second part was "or from the rights of an employee respecting smoking in a workplace."

Mr. Carrothers: I would just like to clarify procedurally since I am not quite sure where we stood. We had an amendment, then my amendment to an amendment. We have now had the thing withdrawn, and I am not quite sure. How about if I withdraw my amendment to the motion which may no longer be before the committee? Then we can deal with Mr. Sterling's amendment to his amendment.

Mr. Chairman: You are withdrawing your amendment to delete?

Mr. Carrothers: That is right, because I think we might still be dealing with that, strictly going by the rules of order—

Mr. Chairman: Yes, we are.

Mr. Carrothers: —so I thought if I withdrew it we would then get ourselves back on track.

Mr. Chairman: I was just clarifying what had been moved. You are right, we did have an amendment to an amendment. So yours is withdrawn and now I can accept the clarification of what Mr. Sterling's amendment is. Just so that it is absolutely clear, his amendment is to add to section 10 a new subsection (3), reading as follows:

"Nothing in this act derogates from the right of an employer to prohibit smoking in a workplace or from the rights of an employee respecting smoking in a workplace."

I think I heard a request from Mrs. Sullivan.

Mrs. Sullivan: Yes. We appreciate the time that is being spent with counsel in coming up with words on this, and we are prepared to accept this amendment.

Mr. Chairman: Ready for the question?

Mr. Allen: In so far as the concern here is simply to reaffirm common-law rights that exist or rights that exist under other legislation for both employers and employees, I understand the nature of the latest wording for the amendment.

At the same time, what I myself hear in the latter half of the amendment, respecting the rights of an employee with regard to smoking in the workplace, does not speak to me about the right of an employee to a smoke-free workplace. It seems to me to get into the equivocation all over again about the right of an employee to smoke in a workplace.

Yet you are back into the whole ambiguity of smokers versus nonsmokers and what rights they do have in the workplace. I thought this bill was premised on the concept that nonsmokers have a right to a smoke-free workplace and it is that assertion that I personally prefer to see in this amendment. I now see it unfortunately being equivocated, if not outrightly removed, in the latest turn of the wording.

I just want to say that I think that in the light of this last wording, I am not quite as interested in supporting it as I was previously.

Mr. Chairman: Okay.

Mr. Sterling: I agree with Mr. Allen. I have introduced confusion by adding the words. Therefore I am going to withdraw again. I appreciate the patience of everyone. My amendment is going to be as originally written. That is, I move that section 10 of the bill be amended by adding thereto the following subsection:

"Nothing in this act derogates from the right of an employer to prohibit smoking in a workplace."

Mr. Chairman: Okay.

Mr. Allen: I would like to amend that by adding the original words that Mr. Sterling had, to test the committee's position with respect to the whole original amendment.

Mr. Chairman: So you are amending the amendment to add "or from the rights of an employee to a smoke-free workplace"?

Mr. Allen: Exactly.

1130

Mr. Chairman: Okay. We have an amendment to the amendment. Is there any discussion on that? Mr. Owen, I know you had your hand up.

Mr. Owen: I wanted to say what Mr. Allen had said and I really thought the wording Mr. Sterling had ended up with was exactly the opposite of what I think he intended. I was just going to point it out to him, but he has already thought of that.

Mr. Carrothers: Could we just have some clarification again as to what is before the committee right now? I am a little confused.

Mr. Chairman: There is an amendment before the committee by Mr. Sterling to add subsection 10(3), "Nothing in this act derogates from the right of an employer to prohibit smoking in the workplace." There is an amendment to that amendment by Mr. Allen, to add to that, "or from the rights of an employee to a smoke-free workplace." We are now dealing with the amendment to the amendment.



Mr. Carrothers: Mr. Sterling's motion was, "Nothing in this act derogates from the right of an employer to prohibit smoking in the workplace," and Mr. Allen has then added extra wording. Is that what has happened here?

Mr. Chairman: Yes.

Mrs. Sullivan: Can I once again clarify with counsel? My view is that this amendment is really an amendment for emphasis, rather than for content, in that the content is already included. It does not change in any way the intent or the purpose of the bill and is not likely to lead to confusion in any interpretation of the bill later.

Mr. Blair: That is certainly my opinion about this amendment. I think saying it is an amendment for emphasis is exactly right, because the intention of this bill is not to affect any other rights that any employers or employees may have out there. The effect of this will be just to highlight that intention.

Mr. Sterling: I would just like to say I am in favour of Mr. Allen's amendment to my amendment.

Mr. Chairman: You will have an opportunity to vote in favour of it, Mr. Sterling.

Mr. Sterling: I just want to give the lead to the rest of the group.

Mr. Chairman: All those in favour of the amendment to the amendment? Carried? Opposed?

All those in favour of the amendment as amended? Carried.

Section 10, as amended, agreed to.

Sections 11 to 13, inclusive, agreed to.

Title agreed to.

Mr. Chairman: Shall the bill, as amended, carry? There is a request for a recorded vote.

The committee divided on whether the bill, as amended, should carry, which was agreed to on the following vote:

Ayes

Carrothers, Cordiano, Kanter, Miller, Owen, Sullivan.

Nays

Allen, Cunningham, Sterling.

Ayes 6; nays 3.

Bill, as amended, ordered to be reported.

Mr. Chairman: Before we adjourn, I want to thank the clerk, the researcher, Mr. Nishi, the ministry staff, the parliamentary assistant, legislative counsel and members of the committee for their co-operation during

the hearings. I know there were times when opposition members, for example, were not able to be here right at the beginning of a session, and we had permission and co-operation to carry on, so the hearings were kept right on schedule right through the two days. We have had good discussion on this bill, and, as chairman, I want to thank everyone on the committee for their excellent co-operation throughout the process.

Mr. Allen: I would like to record our appreciation of your patience and due care in guiding us through the bill.

The committee adjourned at 11:35 a.m.







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